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Catherine Magone

1 that were trained?

2 **A. I don't know.**

3 **Q. Do you know how long the training**

4 **took place?**

5 **A. I don't know.**

6 **Q. Do you know where it took place?**

7 **A. I don't know.**

8 **Q. Do you know apart from this per**

9 **diem nurse anyone involved in that training?**

10 **A. No.**

11 **Q. Did you assign anyone to this**

12 **training?**

13 **A. No.**

14 **Q. Do you know whether Nicole Serra**

15 **was trained?**

16 **A. No.**

17 **Q. Do you know whether any of your**

18 **nurses under your supervision were?**

19 **A. No, none of them were.**

20 **Q. Did you see any writing in**

21 **connection with completing this training?**

22 **A. I don't even know if it's been**

23 **completed to be honest.**

24

25

MS. NICAJ: I'm going to call
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1 for production of documents in connection

2 with this program and the training of the

3 trainer and so forth.

4 -DOCUMENT/DATA REQUESTED: All documents

5 concerning disaster training program.

6 **MR. KEIL: I'll take it**

7 **under advisement.**

8 **Q. You indicated that more than one**

9 **person would be assigned to the palliative care**

10 **service as a social worker, is that right?**

11 **A. More than one person could be**

12 **involved in palliative care.**

13 **Q. Whether they could be, did you, in**

14 **fact, ever advise Ms. Newmark that you were**

15 **appointing Nicole Serra to the palliative care**

16 **service?**

17 **A. No. I told her that I was sending**

18 **Nicole for the training and that she would be**

19 **the lead person because she was going for the**

20 **training.**

21

22 **MS. NICAJ: Can you mark**

23 **this as Plaintiff's Exhibit 2.**

24 **(Plaintiff's Exhibit 2**

25 **8/15/06 Memo marked for identification, as**

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1 of this date.)

2 **Q. I'm going to show you what's been**

3 **marked Plaintiff's Exhibit 2 for identification.**

4 **Do you recognize that document?**

5 **A. Sure.**

6 **Q. What do you recognize it to be?**

7 **A. A note to my file.**

8 **Q. The first sentence, the first full**

9 **sentence, of that document there is a date of**

10 **8/15/06: "I met with Carole Newmark today to**

11 **inform her of my decision to appoint Nicole**

12 **Serra the social worker for the palliative care**

13 **service." Do you see that?**

14 **A. Mm-hmm.**

15 **Q. Do you want to change your earlier**

16 **response?**

17 **A. Yes.**

18 **Q. And how would you like to change**

19 **that?**

20 **A. All right. I told Carole that I**

21 **was going to appoint Nicole to the palliative**

22 **care service.**

23 **Q. So when you testified before it was**

24 **not true, is that right?**

25

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Catherine Magone

1 **A. Well, semantics.**

2 **Q. What do you mean?**

3 **A. Because the palliative care**

4 **service, even though I was appointing her with**

5 **the palliative care, that would not mean that**

6 **Carole would not be involved with palliative**

7 **care. Her patients needed palliative care; she**

8 **would be expected to be a part of the palliative**

9 **care program.**

10 **Q. Is that contained anywhere in**

11 **Plaintiff's Exhibit 2 for identification?**

12 **A. I don't know what you mean.**

13 **Q. You just testified that Carole**

14 **would be expected if any of her patients were**

15 **part of this program to be part of the -- to**

16 **participate in that. Is that contained anywhere**

17 **in Plaintiff's Exhibit 2?**

18 **A. No.**

19 **MR. KEIL: She is referring**

20 **to the document in front of you.**

21 **A. Right. No.**

22 **Q. You met with her in your office;**

23 **you told her to come over, is that right?**

24 **A. Correct.**

25

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Catherine Magone

Q. Was it right away that she came over after you called her?

A. I believe so.

Q. And who spoke first?

A. I did.

Q. What in words or substance did you say?

MR. KEIL: I'm going to object. This is all -- you've already asked this question.

MS. NICAJ: I'm permitted to ask it again, and I am just warning you you are violating the federal rules by making a speaking objection. So you can make, state your objection but that's it. Go ahead.

Q. What in words or substance did you say?

A. I told her that I was assigning Nicole Serra to be the person that would be appointed to the palliative care service and would be traveling to Ohio with Roseanne O'Hare and Maura Del Bene. I told her I made this decision based on input from Maura Del Bene and

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Roseanne and that I felt that Carole would be busy with her disaster mental health training and that Nicole being young in her career would need to have something that I think that she would call her own.

Q. What do you mean, young in her career? What do you mean by that?

A. She is a relatively new social worker. She has only been working for four years, and she showed a lot of interest in the palliative care program.

Q. Wasn't Ms. Newmark also relatively new in the social work career as you put it?

A. Twice as long.

MS. NICAJ: Plaintiff's Exhibit 3.

(Plaintiff's Exhibit 3 5-page Resume of Nicole Serra marked for identification, as of this date.)

Q. When you say twice as long, what do you mean by twice as long in her career?

A. I believe that Nicole had four years' experience.

Q. What about her counseling

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experience at the JCC Westchester?

A. I didn't believe that she was a social worker at the time.

Q. Do you know whether she had any social work responsibilities?

A. From what is described, I would say no.

Q. Did she advise you of such during the course of your interview with Ms. Serra?

A. Well, it appears here that she received her master's in social work in 2001.

Q. I'm asking you, did Ms. Serra advise you in words or substance that she had social work responsibilities at the JCC Westchester?

A. No.

Q. Did you ask her about that? Did you ask her about her experience there?

A. Yes.

Q. What did you ask her?

A. I would have asked her to describe her -- whatever -- whenever I interview somebody, I ask them to describe their resume.

Q. I'm not asking what you would have

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done.

A. I don't remember.

Q. Hold on. I'm asking what do you recall asking her.

A. I don't remember.

Q. In response to what you advised Ms. Newmark about assigning Ms. Serra to the palliative care service, what, if anything, did she say?

A. She was very angry.

Q. What did she say?

A. I'm very disappointed.

Q. Anything else?

A. Just visibly angry and disappointed.

Q. When you say visibly angry, what was her expression?

A. Anger.

Q. How did that manifest itself?

A. Huffing and puffing.

Q. Huffing and puffing?

A. Mm-hmm.

Q. Can you demonstrate that for us?

A. (Indicating) visibly angry. Carole

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1 **was a very angry woman.**
 2 **Q.** Apart from this communication with
 3 Ms. Newmark, did you ever -- concerning
 4 Ms. Newmark, did you ever document her anger?
 5 **A.** No.
 6 **Q.** When you say she was a very angry
 7 woman, what do you mean by that?
 8 **A.** Well, part of the reason why I
 9 chose not to appoint Carole to the position of
 10 the palliative care was her input from Maura
 11 Del Bene who stated to me that she is a very
 12 angry woman, and her demeanor would not lend
 13 itself to taking care of dying patients.
 14 **Q.** Did Ms. Del Bene ever express any
 15 similar concerns about Ms. Serra?
 16 **A.** No.
 17 **Q.** Did you ever see any E-mails
 18 concerning Ms. Serra's demeanor that Maura
 19 Del Bene submitted?
 20 **A.** No.
 21 **Q.** Did you ever ask her?
 22 **A.** If she felt that Maura -- that
 23 Nicole had a negative angry demeanor?
 24 **Q.** Did you ever ask her about Nicole's

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Catherine Magone

1 performance?
 2 **A.** Yes.
 3 **Q.** In words or substance what did she
 4 say?
 5 **A.** You are talking about Maura
 6 Del Bene?
 7 **Q.** Yes.
 8 **A.** Oh, she highly recommended Nicole
 9 to be the person that would be in the palliative
 10 care program for a number of reasons. Okay.
 11 Nicole sought her out, always willing to learn,
 12 takes copious notes whenever you are teaching
 13 her anything. Made it a point of corroborate --
 14 collaborating with Maura on cases that involved
 15 palliative care, showed an interest in
 16 palliative care, unlike Carole who Maura told me
 17 had made -- Maura had made many attempts to meet
 18 with Carole to talk about palliative care. She
 19 apparently had set up weekly meetings which
 20 Carole did not show up. I believe she only
 21 showed up twice.
 22 **Q.** Out of how many weekly meetings?
 23 **A.** I don't know. I don't know.
 24 **Q.** Do you know whether she failed to

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Catherine Magone

1 show up at one?
 2 **A.** No. Ten.
 3 **Q.** She failed to show up at ten?
 4 **A.** Eight. I'm guessing the number.
 5 **Q.** Don't guess.
 6 **A.** Okay. I don't know. I don't know.
 7 **I don't -- I don't know but it was --**
 8 **Q.** Did you ask her how many meetings
 9 did Ms. Newmark fail to attend after having
 10 those scheduled meetings?
 11 **A.** I don't remember what she told me.
 12 She probably -- she might have given me a
 13 number, but I don't remember what it was.
 14 **Q.** I don't want you to guess.
 15 **A.** Okay. She also told me that
 16 despite attempts to get Carole involved in
 17 policy writing and procedure writing related to
 18 palliative care, specifically for a bereavement
 19 policy, she didn't do anything.
 20 **Q.** Did you ever see that in writing
 21 anywhere, that Ms. Del Bene attempted to get
 22 Ms. Newmark involved in writing as you put it?
 23 **A.** Did I see anything in writing? No.
 24 **Q.** Did you ever ask her for any

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Catherine Magone

1 documents, incidents wherein she requested from
 2 Ms. Newmark her participating in this writing
 3 process?
 4 **MR. KEIL:** Could you read
 5 the question back, please.
 6 (Record read.)
 7 **A.** No.
 8 **Q.** Who supervised Ms. Serra?
 9 **A.** Diane Lantz.
 10 **Q.** You indicated that Ms. Newmark's
 11 position was what?
 12 **A.** Senior social worker.
 13 **Q.** Was she, in fact, Ms. Serra's
 14 direct supervisor?
 15 **A.** She was the lead social worker with
 16 some --
 17 **Q.** Was she her direct supervisor?
 18 **A.** Not on paper.
 19 **Q.** When you say not on paper?
 20 **A.** Not part of her job description.
 21 **Q.** What was her job description?
 22 **A.** She was senior social worker.
 23 **Q.** Was her position as senior social
 24 worker reduced to writing?

COMPU-TRAN SHORTHAND REPORTING

Catherine Magone**A. No.****Q. Did you have an understanding that Ms. Newmark was Ms. Serra's direct supervisor?****A. No.****Q. Did you ever communicate with Ms. Newmark that she would supervise Ms. Serra?****A. Well, she did, in fact, supervise her.****Q. So she was her supervisor. Did you ever --****MR. KEIL: Was that a question?****MS. NICAJ: No. I'm just -- we finally got to it. So I apologize. Withdraw that.****Q. Do you know how many cases or patients were referred to in the social worker -- were referred to Ms. Serra while Ms. Newmark was employed there?****MR. KEIL: I'm going to object as to form.****Q. How many patient referrals were there to your knowledge to Ms. Serra while Ms. Newmark was employed there?**

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Catherine Magone**A. It could vary day to day. It could be four one day eight the next.****Q. What about with Ms. Newmark?****A. Same.****Q. And that was the limit; eight was the most?****A. We don't have a number on the limit. But I would say that their caseload was probably an average of six to eight.****Q. Were there any statistics ever kept in reference to the caseload or maintained by your office?****A. No.****Q. Did anyone ever seek to compile statistics in reference to the number of cases each social worker was assigned?****A. I would know that on a daily basis pretty much because I was -- I would ask the question.****Q. Did anyone seek to compile information concerning the number of cases or patients each social worker was assigned each day?****A. No, no.**

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Catherine Magone**Q. Are there any records to your knowledge regarding that?****A. No.****Q. Apart from what you've already testified to, what, if anything else, do you recall communicating with Ms. Newmark about assigning Nicole Serra to the palliative care services?****A. Nothing.****Q. Apart from what you've already testified to, what, if anything, do you recall Ms. Newmark stating in words or substance with respect to your decision?****A. Nothing else.****Q. Did there come a time that anyone communicated with you concerning your decision to appoint Nicole Serra to the palliative care services?****A. I don't understand the question.****Q. Did anyone ever communicate with you that Ms. Newmark had gone to them about your decision?****A. To human resources, yes.****Q. Apart from human resources did**

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Catherine Magone**anyone else ever communicate with you that Ms. Newmark had expressed concern about that?****A. No.****Q. I'm going to show you again what's marked as Plaintiff's Exhibit 2 for identification. You have it underneath some of those documents.****When did human resources first communicate with you concerning Ms. Newmark expressing her concern about your decision?****A. I don't know the exact date.****Q. Can you approximate how many days?****A. It was a few days after our discussion.****Q. Who communicated with you?****A. Pat Orsaia.****Q. Was this verbally, in writing or some other manner?****A. I believe E-mail.****Q. What was the substance of the E-mail?****A. I believe that Pat was going on vacation and she just E-mailed me that Carole Newmark had come to her with some concerns and**

COMPU-TRAN SHORTHAND REPORTING

Catherine Magone

1 **that she would be in touch with me when she**
2 **returned.**

3 **Q. What was stated in the E-mail?**

4 **A. Something to that effect.**

5 **MS. NICAJ: Four.**

6 **(Plaintiff's Exhibit 4**

7 **8/22/06 E-Mail marked for identification,**
8 **as of this date.)**

9 **Q. I'm going to direct your attention**
10 **to what is marked as Plaintiff's Exhibit 4 for**
11 **identification. Do you see that?**

12 **A. Yes.**

13 **Q. It appears to be an E-mail from you**
14 **to Pat Orsaia and the subject is accept that**
15 **Carole Newmark's concerns. Do you know what her**
16 **E-mail to you was?**

17 **MR. KEIL: I object as to**
18 **form. Do you understand the question?**

19 **THE WITNESS: No.**

20 **Q. You said she E-mailed you. What**
21 **was the substance of her E-mail to you?**

22 **A. Well, this is back in -- this is**
23 **August.**

24 **Q. Right.**

25 **COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone

1 **A. This is July. It's a month later.**
2 **But it wouldn't be related.**

3 **Q. What is July? What is July? Both**
4 **of them are August.**

5 **A. Oh, August. I'm sorry, I'm sorry.**
6 **I'm sorry. I'm sorry.**

7 **Q. It's okay.**
8 **What were you referring to as July, by**
9 **the way?**

10 **A. I was just thinking it was July.**
11 **You know. It wasn't July. It's August.**

12 **Q. What E-mail did Ms. Orsaia send to**
13 **you?**

14 **A. This E-mail was probably when she**
15 **came back setting up a meeting with Carole and**
16 **I.**

17 **Q. I'm not asking about probably. I'm**
18 **asking -- you indicated that Ms. Orsaia first**
19 **sent you an E-mail and you read it and related**
20 **it to Ms. Newmark's concerns.**

21 **A. At that time she didn't elaborate.**

22 **Q. Do you know where that E-mail is,**
23 **because we don't have it.**

24 **A. Maybe it wasn't an E-mail then.**

25 **COMPU-TRAN SHORTHAND REPORTING**

Catherine Magone

1 **Maybe it was a phone call.**

2 **Q. But what did you mean, accept that**
3 **Carole Newmark's concerns, if you didn't receive**
4 **the communication in E-mail form?**

5 **A. No. I had a call from -- I don't**
6 **know if it was a call from Pat or an E-mail from**
7 **Pat a few days after the 8/15 encounter with**
8 **Carole. And if my memory has it, Pat was going**
9 **to be away so she couldn't set up a meeting**
10 **until she got back. So this one must have been**
11 **when she got back.**

12 **Q. You testified earlier that she**
13 **E-mailed you.**

14 **A. I'm not a hundred percent sure. It**
15 **was either an E-mail or a phone call. I don't**
16 **recall.**

17 **Q. Was there a reason why you would**
18 **have only a simple subject accepted Carole**
19 **Newmark's concerns if she wasn't the one that**
20 **E-mailed you about those concerns?**

21 **A. No. Accepted would be if I was**
22 **getting -- this is probably a -- what do you**
23 **call it -- to your calendar, an appointment**
24 **regarding her concerns.**

25 **COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone

1 **Q. The subject concerned an**
2 **appointment, your subject in Exhibit 4?**

3 **A. I believe so.**

4 **Q. Does it indicate anywhere the date**
5 **the appointment would be? You said an**
6 **appointment for what?**

7 **A. No, no. When you -- in outlook**
8 **when someone sends you an E-mail, if they are**
9 **setting up an appointment to meet, it**
10 **automatically goes in your calendar if you**
11 **accept it.**

12 **Q. So there was an E-mail from Pat**
13 **Orsaia. That's what I'm trying to get to.**

14 **A. Two different times, you are**
15 **talking about two different things. She either**
16 **called me or E-mailed me that there was going to**
17 **be a meeting, and this one appears to be the**
18 **setting up of the meeting.**

19 **Q. Accepting her E-mail, or no? I'm**
20 **not trying to put words in your mouth, but you**
21 **said ordinarily something like that, that would**
22 **indicate someone E-mailed you through outlook**
23 **with an appointment.**

24 **A. Yes.**

25 **COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**Q.** So she did in fact E-mail you?**A. Yes. Here. But I don't remember if it was -- if she had E-mailed me earlier or she just called me earlier. There was a difference in time here.****Q.** What was the substance of that E-mail?**A. I don't recall.****MS. NICAJ:** I'm going to call for the production of it, because we don't have it and it would be enlightening to know what the E-mail was.**MR. KEIL:** I'm not sure there was such an E-mail, but it would be something we can discuss off the record. But I will take the request under advisement.**MS. NICAJ:** It is more than a request. We previously requested this information.**-DOCUMENT/DATA REQUESTED: Pat Orsaia E-mail****Q.** Do you recall the substance of that E-mail?**A. I don't recall.****COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**Q.** Prior to any meeting with Ms. Newmark, do you know what those concerns Ms. Newmark had expressed to Patricia Orsaia were?**A. Yes.****Q.** What?**A. That she felt that the conversation that I had had with her when I told her that I was appointing Nicole Serra to the program, palliative care program, that in using the word "young" that implied ageism.****Q.** Well, she doesn't exactly say you just used the word "young," did she, to your knowledge?**A. Using the word "young" implied ageism is what she said.****Q.** Did she identify what comment she exactly attributed to you in connection with using the word "young" to your knowledge?**A. Yes.****Q.** What?**A. She said that I said, which I deny, that Nicole was younger therefore could do a better job.****COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**Q.** When did you learn that she had communicated this concern to Pat Orsaia?**A. I don't recall.****Q.** Was this around the time you received the appointment for August, accepted Carole Newmark's concerns?**A. Pardon me?****Q.** Verbal response, she said.**A. I don't know the exact date.****Q.** Do you recall communicating with Ms. Orsaia prior or around August 21 about Ms. Newmark's concerns about --**A. Yes.****Q.** So if it wasn't August 21, it was around that time, is that right?**A. Yes.****Q.** When was the next communication that you had with anyone concerning Ms. Newmark after your August 21, 2006 E-mail?**A. I don't recall exact dates.****Q.** With whom?**A. Pat Orsaia.****Q.** Was this at a meeting with Ms. Orsaia?**COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**A. Yes.****Q.** Was anyone else present?**A. No.****Q.** Did Ms. Orsaia take notes?**A. I don't recall.****Q.** Did she have you write a statement as to what you actually told Ms. Newmark?**A. No.****Q.** How did you come to meet with Ms. Orsaia?**A. She asked to meet with me.****Q.** Do you know how long after the August 21, 2006 E-mail?**A. I don't recall.****Q.** What did she say?**A. I just told you.****Q.** She asked to meet with you?**A. She asked to meet with me to discuss Carole's concerns.****Q.** When she asked you to meet with her to discuss Carole's concerns, did she identify what those concerns were?**A. I don't recall.****Q.** Did you meet -- then meet with her?**COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**A. Yes.****Q. Apart from what you've already testified to, did you say anything else to her or did she say anything else to you?****A. No.****Q. How long after your telephone conversation with her did you meet with Ms. Orsaia?****A. I don't recall.****Q. Was it the same day, the next day, sometime after?****A. Probably sometime after.****Q. Who spoke first at this meeting?****A. At the meeting that Pat Orsaia and myself were at?****Q. That's correct.****A. I don't recall who spoke first.****Q. What do you recall her saying in words or substance?****A. That Carole had come to meet with her, that she -- and that she had indicated -- Carole had indicated that I had said that I was giving the position to Nicole because she was younger and better able to do the job and that**

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Catherine Magone**this was constituting ageism.****Q. What, if anything, did you say in response?****A. I totally denied that. I in no way implied or inferred that age had anything to do with my decision.****Q. Did you reduce that to writing at that time to Ms. Orsaia?****A. No, I did not.****Q. Did Ms. Orsaia take any notes of your meeting with her?****A. I don't recall.****Q. Did she record the conversation?****A. No.****Q. Was anyone else present?****A. No.****Q. What else was said by you or her at this meeting?****A. She told me that she had expressed to Carole that she had worked with me for the past -- for four years and that no -- at no time during that period had age ever been an issue. She also told Carole -- she also told me that she told Carole that I hired her knowing her age**

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Catherine Magone**and I'm close to her age myself.****Q. Who is close to Carole's age?****A. (Indicating).****Q. How old are you?****A. I'm going to be 55.****Q. Do you know how old Ms. Newmark is?****A. I think she's 62. I also have many staff in the department that are over 55 and 60.****Q. Did Ms. Orsaia take any notes as far as you can tell of what you told her?****A. I don't recall.****Q. Did you request that she document your response in writing?****A. No.****Q. Did she ever ask you to reduce what you in fact told Ms. Newmark in writing?****A. Yes.****Q. When?****A. After our meeting with Carole.****Q. So you actually met with Ms. Newmark. How long did your meeting with Pat Orsaia last, the one in which you and she were by yourselves?****A. 40 minutes.**

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Catherine Magone**Q. When was the next time any communications were held in your presence or which you participated in concerning Carole Newmark following this meeting with Pat Orsaia?****A. I don't recall. I don't believe there were any.****Q. Pardon?****A. I don't believe there were any other meetings, but I don't recall.****Q. I didn't ask for any meeting. Any communications after your meeting with Pat Orsaia did you participate in any communications or were there any communications in your presence concerning Carole Newmark?****A. I don't recall. Can I ask a question?****MR. KEIL: No.****Q. What was the question you wanted to ask?****A. When you are asking me if I met with Pat Orsaia at any other time --****Q. No, I didn't ask that.****A. Okay. Then I need you to rephrase the question for me.**

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Catherine Magone

Q. Did you have any communications with anyone or were there any communications in your presence concerning Ms. Newmark after your meeting with Pat Orsaia?

A. Yes.

Q. When was the next time?

A. I don't recall.

Q. With whom?

A. Pat Orsaia.

Q. Was this in writing, via telephone or in some other manner?

A. I'm trying to get my time frames confused. I believe I met with her to discuss -- but I'm not -- to discuss Carole's unscheduled time off.

Q. When after the meeting?

A. See, I'm not sure if it is before or after.

Q. Before or after what?

A. That meeting. At some point I met with her about Carole's unscheduled time off.

Q. Did you ever send any E-mails or anything in connection with that?

A. No.

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Catherine Magone

Q. Before you learned that Ms. Newmark had expressed concern to Pat Orsaia about what she perceived as ageism, did you ever document her issue with attendance?

A. Yes.

Q. When?

A. I don't recall.

Q. Is it fair to say that if there is none in her personnel file then you didn't?

A. No.

Q. It is not fair to say. Where would your documentation of her attendance then appear if it is not in her personnel file?

A. In human resources?

Q. Yes.

A. Or in my office?

Q. In either one.

A. In my office it would be.

Q. It would be in your office.

Are there records concerning Ms. Newmark that you have but the personnel office does not?

A. I think we gave everything to them.

MR. KEIL: Just answer the question.

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Catherine Magone

A. Yeah, I gave everything to them.

Q. So is it fair to say if there is

nothing documented concerning Ms. Newmark's absences prior to her expressing her concern to Pat Orsaia about your comments or comments she attributed you making, that there aren't any?

A. I don't recall if what is

documented in her file was prior to or after. I just can't recall when it was. But I do have documentation in her file regarding a discussion about issues with time off.

Q. Was that after she had complained about you?

A. I don't recall.

Q. You indicated you met with Pat Orsaia about Ms. Newmark's unscheduled time off. When you say unscheduled time off, what do you mean by that?

A. Calling in sick.

Q. Do you know whether those -- the calling in sick were legitimate?

A. Legitimate?

Q. Yes.

A. She was sick.

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Catherine Magone

Q. Did you have any doubt that she was sick?

A. We don't ask. It's a policy, unscheduled time off. The policy is that you don't -- my concern was that she was only there a short period of time, and she had already had three unscheduled times off. And one day she left after an hour and a half, went home sick, and then she was requesting an additional day off to have a procedure.

Q. And did she document that procedure that she was having? Did she submit a doctor's note?

A. She did.

Q. Now, are there any rules and regulations with respect to unscheduled time off?

A. The rule is that if anything over five unscheduled time off in a year is considered excessive.

Q. Is there a certain amount of discretion that is allotted to managers in determining the scheduled be -- the unscheduled time off?

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Catherine Magone

- 1 **A. No, black and white.**
 2 **Q. It is black and white. Okay.**
 3 **Where is that contained?**
 4 **A. It is policy.**
 5 **Q. What is the policy?**
 6 **A. It is a human resource policy.**
 7 **Q. What is the name of the policy?**
 8 **A. Unscheduled time off, I believe.**
 9 **Q. When did you last review it?**
 10 **A. Yesterday.**
 11 **Q. What does that policy say?**
 12 **A. That any unscheduled time off, five**
 13 **is considered excessive.**
 14 **Q. Did she have five?**
 15 **A. No. I was concerned. I didn't**
 16 **write her up for it. She had --**
 17 **Q. Pardon me?**
 18 **A. She had three in less than a**
 19 **year -- in less than four months.**
 20 **Q. She was hired in February. And she**
 21 **had three as of when?**
 22 **A. I don't recall exactly.**
 23 **Q. There is a probationary policy,**
 24 **right?**
 25

COMPU-TRAN SHORTHAND REPORTING

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Catherine Magone

- 1 **A. Correct.**
 2 **Q. Does the probationary policy**
 3 **concern any reference to unscheduled time off?**
 4 **MR. KEIL: Object as to**
 5 **form. Answer if you can.**
 6 **A. I don't know.**
 7 **Q. Did you ever review that?**
 8 **A. Probationary policy? Yes.**
 9 **Q. Does it contain any provisions for**
 10 **unscheduled time off?**
 11 **A. I don't know. I can't recall.**
 12 **Q. Do you recall where you met with**
 13 **Pat Orsaia about Ms. Newmark's unscheduled time**
 14 **as you put it?**
 15 **A. In her office.**
 16 **Q. When?**
 17 **A. I don't recall.**
 18 **Q. Do you recall whether it was in**
 19 **August, September, some other month?**
 20 **A. I don't recall.**
 21 **Q. Do you recall -- do you maintain a**
 22 **calendar?**
 23 **A. Yes.**
 24 **Q. Does your calendar reflect when you**
 25

COMPU-TRAN SHORTHAND REPORTING

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Catherine Magone

- 1 met with Pat Orsaia in reference to Ms. Newmark?
 2 **A. Not necessarily.**
 3 **Q. Did you ever send anything in**
 4 **writing to Ms. Orsaia with respect to your**
 5 **concern relating to Ms. Newmark's time off?**
 6 **A. No.**
 7 **Q. Are there any employees at the**
 8 **hospital that have more -- have had more than**
 9 **five unscheduled time, days off?**
 10 **A. In my department?**
 11 **Q. Yes.**
 12 **A. Yes.**
 13 **Q. Have you submitted anything in**
 14 **connection with them --**
 15 **A. Yes.**
 16 **Q. -- all of these?**
 17 **Can you identify each employee who has**
 18 **had unscheduled time off of more than five days,**
 19 **five or more days --**
 20 **A. Yes.**
 21 **Q. -- since you've become the**
 22 **director?**
 23 **A. Yes.**
 24 **Q. Which ones?**
 25

COMPU-TRAN SHORTHAND REPORTING

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Catherine Magone

- 1 **A. Actually, only one.**
 2 **Q. Who?**
 3 **A. Cheryl Anderson.**
 4 **Q. There has been no other employees**
 5 **that have had more than five or more days?**
 6 **A. My employees don't take sick time.**
 7 **Q. Hold on. I'm not finished.**
 8 **There have been no employees that have**
 9 **had more than five days absence or unscheduled**
 10 **absences?**
 11 **A. Not to my knowledge.**
 12 **Q. No, not to your knowledge?**
 13 **A. Not to my knowledge.**
 14 **Q. What about employees in hospital**
 15 **that are not necessarily under your supervision?**
 16 **Do you know whether there have been employees**
 17 **with five or more days absent?**
 18 **A. I don't know.**
 19 **Q. Have you ever communicated with**
 20 **anyone concerning that?**
 21 **A. I don't understand the question.**
 22 **Q. Have you ever learned through any**
 23 **source that there have been employees who have**
 24 **been absent more than five days?**
 25

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Catherine Magone**A. No.****Q. Cheryl Anderson is who?****A. She is the assistant director for risk management.****Q. Is she still employed there?****A. Yes.****Q. How many days has she been absent?****MR. KEIL: Over what period****of time?****MS. NICAJ: Withdrawn.****Q. When was Ms. Anderson absent more than five days that was unscheduled?****A. 2007.****Q. What about for any prior years?****A. No.****Q. How many days was she absent?****A. It was actually the period 2006 to 2007, it was whatever month.****Q. How many days was she absent?****A. They're episodes, not days, just to clarify. And there were, I believe, six.****Q. When you say episodes, what do you mean by that?****A. Each -- it could be three days is****COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**only one episode.****Q. Oh, so you are distinguishing it. How many episodes were there?****A. Six.****Q. And there are six different episodes that she was absent?****A. Yes.****Q. How many days in total was she absent?****A. Oh, I don't recall. You are only counted -- you only count the episode. You don't penalize. If it's three days they are out sick, it is considered one episode. So you are allowed to have five -- you can't have any more than five episodes.****Q. So she had six episodes?****A. Yes.****Q. What were the circumstances? Was she fired?****A. No.****Q. Did you submit any warnings to Ms. Anderson?****A. Yes.****Q. By way of what?****COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**A. By --****Q. Was it a reprimand?****A. Yes.****Q. What was it?****A. It was a corrective action.****Q. Did you ever submit any such corrective action with respect to Ms. Newmark?****A. No.****Q. And Ms. Anderson has been the only employee who has had five or more episodes since you've been hired as director?****A. To my knowledge.****Q. Is there a reason why you wouldn't have learned of that, an employee's absences?****A. No, I know of them.****Q. How many employees do you supervise?****A. 21.****Q. How many episodes did Ms. Newmark have, three?****A. Three.****Q. And there were three separate incidents, that means, right?****A. Yes.****COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**Q. Do you know how many days in total that amounted to?****A. No.****Q. Was Ms. Anderson a probationary employee at the time she had six episodes?****A. No.****Q. Going back to Ms. Newmark now, when was the -- because you -- although you testified about that communication about unscheduled time off, you don't recall the time frame, whether it was before or after your meeting with Pat Orsaia to discuss Ms. Newmark's concerns about you, is that right?****A. I don't recall. I don't want to say something that I'm not a hundred percent sure of.****Q. What I'm trying to do, however, is now go back to your -- that meeting in which Ms. Orsaia told you that Ms. Newmark expressed concerns about ageism in reference to you. When was the next time you, in fact, recall communicating with anyone concerning Ms. Newmark after that?****MR. KEIL: Just to clarify,****COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone

on any subject?

MS. NICAJ: On any subject.

A. I met with Pat Orsaia to discuss some of my issues regarding Carole's performance.

Q. When, it was after, after this?

A. Yes.

Q. Do you recall attending a meeting with Ms. Newmark and Pat Orsaia concerning Ms. Newmark's concerns?

A. Yes.

Q. Do you recall when that was?

A. Somewhere around August 22, perhaps. I don't recall the exact date.

(Plaintiff's Exhibit 5

9/29/06 Memo marked for identification, as of this date.)

Q. I'm going to show you what has been marked as Plaintiff's Exhibit 5. Do you recognize that document?

A. I do.

Q. And when did you first see that document, what is marked as Plaintiff's Exhibit 5?

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Catherine Magone

A. I don't recall if it was — I don't recall if I got this or if it was given to me recently. I don't recall.

Q. I'm going to show you what is going to be marked as Plaintiff's Exhibit 6.

(Plaintiff's Exhibit 6

10/4/06 Memo marked for identification, as of this date.)

Q. I direct your attention to what is marked as Plaintiff's Exhibit 6. Do you see that?

A. Yes.

Q. Do you recognize this document?

A. Yes.

Q. What do you recognize it to be?

A. A memo to Carole Newmark and cc'd to Pat Orsaia.

Q. Is this a memo or an E-mail?

A. E-mail.

Q. Now, you see, "Carole, I'm writing in response to an E-mail that you sent to Pat Orsaia," do you see that?

A. Yes.

Q. Do you now recall actually seeing

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that E-mail to Pat Orsaia?

A. Yes.

Q. So you saw Ms. Newmark's September 29 E-mail to Pat Orsaia, is that right?

A. Yes, yes.

Q. And you were responding to that?

A. Yes.

Q. Now, I'm going to direct your attention to -- you indicated that you had discussed with Pat Orsaia some issues concerning Ms. Newmark, is that right?

A. Yes.

Q. Now, you also at one point met with Ms. Newmark, is that right, and Pat Orsaia --

A. Yes.

Q. -- concerning Ms. Newmark's concern with respect to Nicole Serra and the comments she attributed you making?

A. Yes.

Q. And that occurred on September 28, 2006, is that right?

A. Yes.

Q. Where did you, Ms. Newmark and Ms. Orsaia meet?

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Catherine Magone

A. Her office, Pat Orsaia's office.

Q. Was this a prearranged meeting?

A. Yes.

Q. Did you get to the meeting before Ms. Newmark?

A. I don't recall.

Q. Do you recall who spoke first during the meeting?

A. I don't recall.

Q. What in words or substance did Ms. Newmark say at this meeting?

A. Well, she reiterated the issue of ageism, and I attempted to clarify what it was what I meant when I used the word "young."

Q. I'm going to direct your attention to paragraph No. 3 of Ms. Newmark's E-mail to Pat Orsaia which you received and you responded to. No. 3 reads, "When we went over the issue of ageism, Cathie denied that she said 'Nicole was younger and could handle the job better than I could.' She stated that she did say that Nicole was young and could take things in like a sponge." Did you say that at the meeting with Pat Orsaia and Ms. Newmark?

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Catherine Magone**A. Not that exact word.****Q.** What did you say about Ms. Serra being young and taking things up like a sponge?**A. I said that she was young in her career and that she took things in like a sponge. I did say that.****Q.** Did you ever deny in your other -- in your correspondence to Ms. Newmark that what you said about Nicole being young and could take things up like a sponge being stated at the meeting with Ms. Orsaia?**A. Did I ever deny it?****Q. Yes.****A. That she could take things in like a sponge in --****Q.** No. At the meeting with Ms. Orsaia, she, Ms. Newmark, attributed that you said at that meeting that Nicole Serra was young and could take things up -- could take things in like a sponge, close quote. Do you see that?**A. Yes.****Q.** Did you -- and you were responding to her E-mail, is that right, Ms. Newmark's

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E-mail to Pat Orsaia?

A. Yes.**Q.** Did you ever deny saying -- stating that quote at the meeting with Ms. Orsaia?**A. Yes.****Q.** You denied it?**A. Yes.****Q.** Where is that contained?

MR. KEIL: Just to clarify, you are referring to Plaintiff's Exhibit 5?

Q. Five with respect to Ms. Newmark's E-mail and then her response in Plaintiff's Exhibit 6.**A. I don't understand your question. This is Carole's recollection of that meeting, not mine.****Q.** Did you ever deny stating in your subsequent E-mail in response that you told her in the meeting with Pat Orsaia that Nicole was young and could take things in like a sponge?**A. No.****Q.** I'm going to direct your attention to No. 1 of Plaintiff's Exhibit 5, the paragraph

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that is numbered No. 1. It states, "I would like to know how long my probation has been extended. This should not be held from me until I receive my performance evaluation." Did the fact that her probation was extended, was that communicated to her on September 28?

A. I believe it was before that.**Q.** Did you ever put that in writing to her?**A. No.****Q.** Did you ever advise the human resources in writing that you were extending Ms. Newmark's probation?**A. No.****Q.** How long was her probationary period?**A. Six months.****Q.** And when was it due to expire?**A. The end of September.****Q.** Was it, in fact, September 20 that it had expired?**A. Yes.****Q.** So at the meeting on September 28 there was a discussion on the probationary

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Catherine Magone

period being extended, is that right?

A. Yes.**Q.** Along with the meeting, along with it, Ms. Newmark also expressed her concern about ageism, is that right?**A. Yes.****(Off the record discussion.)**

MS. NICAJ: Plaintiff's

Exhibit 7.

(Plaintiff's Exhibit 7

10/5/06 Memo marked for identification, as of this date.)

Q. I'm going to direct your attention to Plaintiff's Exhibit 7 for identification. Do you recognize that document?**A. I do.****Q.** What do you recognize it to be?**A. An E-mail that I sent to Pat Orsaia.****Q.** What is that in reference to?**A. It's in reference to Exhibit 6.****Q.** What did you mean, "I just wanted you to know that Carole picked up her E-mail at 5:30 last night"? How did you know that?

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Catherine Magone

A. How did I know she picked up her E-mail at 5:30?

Q. Yes.

A. Because I can tell on my E-mail.

Q. Did you request a receipt, is that what you did?

A. I get receipts on everybody.

Q. Do you default to get a receipt?

A. Yes.

Q. "Has not responded to me or spoken to me about it." What were you referring to, about what, your E-mail?

A. About my E-mail.

Q. Did you know what her schedule was between 5:30 on October 4 through 10:50, October 5?

A. No.

Q. Did you know whether she had, in fact, an opportunity to respond to your E-mail?

A. No.

Q. Ms. Newmark was fired on October 5, wasn't she?

A. Yes, she was.

Q. When was that -- you were present

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Catherine Magone

for when her termination was communicated to her?

A. Yes.

(Lunch recess taken.)

Q. There was a time Ms. Newmark was terminated?

A. Yes.

Q. Whose decision was that?

A. Mine.

Q. When did you make the decision?

A. The week of -- I don't remember exactly the exact date.

Q. After that meeting with Ms. Orsaia and Ms. Newmark?

A. Yes.

Q. Who had the authority to terminate Ms. Newmark's employment?

A. I did.

Q. Did you communicate your intent with anyone before you decided?

A. Pat Orsaia.

Q. Anyone else?

A. No.

Q. When did you communicate with

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Ms. Orsaia your intent to terminate

Ms. Newmark's employment?

A. I don't recall.

Q. It was after that meeting on September 28, 2006?

A. We had been talking about it prior to that.

Q. When did you first talk about it?

A. Well, I had concerns for some time about Carole's performance.

Q. When did you first start talking to Pat Orsaia about possibly terminating

Ms. Newmark's employment?

A. After that meeting.

Q. After the September 28 meeting?

A. No. Actually, I believe it was before that.

Q. When?

A. I don't recall the exact date. It was that week.

Q. That week prior to the meeting?

A. Yes.

Q. You already learned that she had -- you already learned at that point that she had

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expressed -- Ms. Newmark had expressed concern about possible ageism on your part, is that right?

A. Yes.

Q. When did you first document your intent to explore terminating Ms. Newmark's employment?

A. I have no documentation of that.

Q. When did you, in fact, decide to terminate her employment?

A. I don't recall the exact date.

Q. Was this before or after that meeting with Ms. Newmark and Ms. Orsaia?

A. The September 28 --

Q. Yes.

A. -- meeting? There was some discussion before that.

Q. I understand there was discussion.

When did you, in fact, decide that she was going to be terminated?

A. It would have been after that meeting.

Q. What happened from the point of that meeting to the point of Ms. Newmark's

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Catherine Magone

1 termination that prompted you to decide to, in
2 fact, terminate her employment?

3 **A. Well, there actually had been a**
4 **number of things that I was concerned over**
5 **several months -- let me finish. Let me finish.**

6 **Q. You can. Go ahead.**

7 **A. A number of things that had**
8 **concerned me for months prior to this event that**
9 **I have documented. But I think that the thing**
10 **that really drove it was Carole's inability to**
11 **accept a management decision and letting go of**
12 **her anger. It affected how she was performing**
13 **her duties.**

14 **Q. What happened between September 28**
15 **meeting and when you, in fact, decided to**
16 **terminate her that made you decide?**

17 **A. Because I decided that during her**
18 **probationary period she didn't pass her**
19 **probationary period.**

20 **Q. Nothing happened from the period of**
21 **the September 28 meeting, in which you advised**
22 **her that her probation was being extended, to**
23 **October 5 when her termination was communicated**
24 **to her, is that right?**

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Catherine Magone

1 **A. Not to my knowledge.**

2 **Q. So on September 28, you indicated**
3 **her probation was being extended?**

4 **A. Yes.**

5 **Q. And on October 5 you communicated**
6 **her termination?**

7 **A. Yes.**

8 **Q. No new incidents occurred from**
9 **September 28 through October 5, is that right?**

10 **A. I don't recall. There might have**
11 **been.**

12 **Q. As you sit here today, can you**
13 **recall any incidents which made you decide to**
14 **terminate her employment on October 5?**

15 **A. I believe there were additional**
16 **complaints about Carole.**

17 **Q. What is the basis of your belief?**

18 **A. Chronologically I just can't recall**
19 **if they were that week or the week before.**
20 **There were many of them.**

21 **Q. Well, again, September 28 you**
22 **communicated that her probationary period was**
23 **being extended, right?**

24 **A. Correct.**

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1 **Q. From September 28 which was a**
2 **Thursday if I'm not mistaken, take a look at**
3 **Plaintiff's Exhibit 5 for identification,**
4 **because it says from, and the date is Friday,**
5 **September 29. The meeting was on the 28th, so**
6 **I'm assuming it was a Thursday, is that a fair**
7 **assumption?**

8 **A. Yes.**

9 **Q. From Thursday, September 28,**
10 **through Wednesday -- Thursday, October 5, what,**
11 **if any, incidents do you recall relating to**
12 **Ms. Newmark that made you decide to, in fact,**
13 **terminate her employment?**

14 **A. I don't recall.**

15 **Q. We are going to go into the**
16 **instances of her performance shortly. When did**
17 **you first have any issues concerning**
18 **Ms. Newmark's performance?**

19 **A. July.**

20 **Q. July. And did you document that?**

21 **A. Yes.**

22 **Q. Did you ever notify her?**

23 **A. Yes.**

24 **Q. Did you put your notice in writing**

COMPU-TRAN SHORTHAND REPORTING

1 to her?

2 **A. No.**

3 **Q. Did you ever express your concerns**
4 **about her performance in writing to her?**

5 **A. No.**

6 **Q. What issues did you have about her**
7 **performance in July?**

8 **A. It was very clear to me -- well,**
9 **first of all, it was -- it was really in July**
10 **that I began to directly supervise Carole.**
11 **Prior to that Diane Lantz was supervising her.**
12 **So upon Diane's resignation, I started to take**
13 **more notice of what Carole was doing. I found**
14 **that there was very little follow up of a lot of**
15 **her cases. There was a meeting, that we have**
16 **weekly meetings that we talk about cases and**
17 **length of stay and issues regarding that. There**
18 **was one particular meeting which is held at 1**
19 **o'clock where every case that I asked her about,**
20 **she claimed that she did not -- had not seen**
21 **yet. There were -- and I talked to her about**
22 **that. I talked to her about her -- my concern**
23 **that she was not adjusting to a case management**
24 **model that we had at Lawrence. She complained**
25

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Catherine Magone

2 that her workload was too high and that she --
 3 you know, she had so much work to do. That's
 4 why she hadn't done anything with the mental
 5 health training. We discussed that she needed
 6 to prioritize better.

7 Q. The mental health training you are
 8 referring to had happened in the end of June?

9 A. Yes.

10 Q. And you are stating you made these
 11 expressions of concern to her in July?

12 A. Oh, let me take that back. That
 13 wouldn't have been July. That wouldn't have
 14 been July, no. That wouldn't have been July.
 15 No. July my concerns were her follow up on
 16 cases, her response to staff, asking for
 17 information or request on her part. Her lack of
 18 documentation in the medical record was a real
 19 concern for me. And we had a discussion about
 20 that. And Carole knew that it was serious
 21 enough that she E-mailed me the following day,
 22 asking if I was considering that a verbal
 23 warning.

24 Q. You said no, right?

25 A. I said no because it wasn't at the
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2 time. But I was concerned.

3 Q. Well, was it not -- if it wasn't a
 4 verbal warning, then what was it?

5 A. It was a little counseling session,
 6 because I wanted her to be successful.

7 Q. Didn't she, in fact, ask to meet
 8 with you prior to this what you call work
 9 session with her prior?

10 A. No.

11 Q. She didn't ask to meet with you?

12 A. No. I asked to meet with her.

13 Q. So -- but correct me if I'm wrong.

14 There was no verbal warning. You never warned
 15 her, is that right?

16 A. No, I just expressed my concerns.

17 Q. You never warned her, is that
 18 right?

19 A. That's right.

20 Q. And you put that in writing, isn't
 21 that right?

22 A. I put the discussion --

23 Q. The fact that it wasn't -- you said
 24 you put what discussion that you had in writing?

25 A. That I had met with her and what we

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Catherine Magone

2 had discussed I put in writing.

3 Q. You put it and you gave it to her?

4 A. No, no.

5 Q. Why not? Why didn't you if you had
 6 concerns about her?

7 A. I expressed them verbally.

8 Q. Why wouldn't you give it to her and
 9 have her sign off acknowledging that -- hold
 10 on one second -- acknowledging the fact that you
 11 had expressed these verbal concerns and she was
 12 aware of them? Why wouldn't you do that?

13 A. It's not my practice.

MS. NICAJ: Plaintiff's

Exhibit 8.

(Plaintiff's Exhibit 8

7/18/06 Memo marked for identification, as
 of this date.)

(Plaintiff's Exhibit 9

7/20/06 Memo marked for identification, as
 of this date.)

(Plaintiff's Exhibit 10

7/20/06 Memo marked for identification, as
 of this date.)

Q. Directing your attention to

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2 particularly Exhibits 8 and 9 for
 3 identification, what do you recognize those to
 4 be?

5 A. Letters to my file.

6 Q. "Your file," meaning were those
 7 placed in Ms. Newmark's personnel file?

8 A. In human resources?

9 Q. Yes.

10 A. No.

11 Q. Is there any way of knowing when --
 12 did you ever have these letters -- you are
 13 saying letters to your file --

14 A. Yes.

15 Q. -- do you mean notes to your file?

16 A. Yes.

17 Q. Notes to your file, right?

18 A. Yes.

19 Q. Is there any way of knowing when
 20 you, in fact, submitted those notes to your
 21 file? Are there any stamped copies saying it
 22 was received by your department or an HR
 23 indicating they were received on or about the
 24 dates that are indicated?

25 A. No.

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Catherine Magone**Q.** I'm going to show you what is

actually Plaintiff's Exhibit 10 for

identification. Do you see that?

A. Yes.**Q.** That one you confirmed there was no verbal warning to Ms. Newmark, is that right?**A.** That's correct.**Q.** Was there anything inaccurate about what your response was to her?**A.** No.**Q.** Did you ever meet with Ms. Newmark concerning her performance?**A.** Yes.**Q.** When?**A.** In July.**Q.** When you say July, when in July?**A.** July 20.**Q.** And that, the E-mail that you have before you, Exhibit 10, that relates to that same meeting, isn't that right?**A.** Yes.**Q.** Wherein you say there was no verbal warning, is that right?**A.** That's correct.

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Catherine Magone**Q.** When was the next time you meet with Ms. Newmark about her performance?**A.** In length of stay meetings, we meet weekly. If there are issues I raise them right there. If she can't -- on several occasions I meet with her not necessarily documenting anything.**Q.** Did you ever submit anything in writing to her wherein you expressed your concerns in writing and had her sign --**A.** No.**Q.** -- hold on -- that she acknowledged receiving your concerns?**A.** No.**Q.** Prior to July were there ever any issues to your knowledge relating to Ms. Newmark's performance?**A.** Yes.**Q.** What?**A.** Diane Lantz voiced concerns over her performance to me. Diane would keep me abreast of what was going on with the case managers and the social workers. And she did have concerns but she never put them in writing.

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Catherine Magone**Q.** How many occasions did Ms. Lantz express concern to you?**A.** Six, seven.**Q.** When was the first time?**A.** Early on.**Q.** Where was it?**A.** Where?**Q.** Where did she express her concerns to you?**A.** In my office.**Q.** What did she say?**A.** She said that she felt that Carole was having a hard time adjusting to the case management model.**Q.** Did she document that to you?**A.** No, she did not.**Q.** Did you document her communication to you?**A.** No. I thought that she was documenting it.**Q.** I'm not concerned with what you thought. I'm saying, did you document?**A.** No, I did not.**Q.** Do you know if she did?

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Catherine Magone**A.** No.**Q.** Did you meet with Ms. Newmark about this?**A.** No.**Q.** Did you ask her what she meant by difficulty in adjusting to the case management program?**MR. KEIL:** Objection as to form. By "her" you mean Ms. Lantz?**MS. NICAJ:** Yes.**A.** Diane was concerned that she couldn't carry a decent caseload.**Q.** And she said that to you?**A.** Yes.**Q.** Did you document that?**A.** No.**Q.** Now, did anyone train Ms. Newmark on this case management caseload and the new program that was formulated after she came back to Lawrence?**A.** Diane worked with her.**Q.** Diane?**A.** Lantz.**Q.** What was Diane's position again?

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Catherine Magone**A. She was the assistant director.****Carole reported directly to her.****Q. Do you know what training she in fact received?****A. Hands-on training, you know, not anything working side-by-side.****Q. Did Ms. Galloway offer to stay on for two weeks to help train Ms. Newmark but you advised her that she wasn't needed to do that?****A. I don't believe it was two weeks.****I don't believe it was two weeks. Yes. I advised her it wasn't necessary.****Q. And Ms. Galloway's position at the time was what?****A. Ms. Galloway had already resigned, retired and was down in North Carolina.****Q. She had offered to come and help Ms. Newmark?****A. She did, but instead we chose to have her have telephone conference with her for questions and concerns. I did not have money in my budget to have her back and forth from North Carolina.****Q. Do you know whether she would****COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**require the travel back and forth or was it just salary?****A. (No response.)****Q. You indicated you didn't have money in your budget for travel back and forth. Did she ask you -- did she ask for travel?****A. No, but I would expect to pay for her travel.****Q. Did she ask you to?****A. We never got that far.****Q. So Ms. Galloway offered to train but you said no?****A. Right, because she was already gone.****Q. When was the next time that Ms. Lantz communicated any concerns to you?****A. She communicated them on an ongoing basis. But, you know, I don't have any documentation of dates and times. She was just concerned.****Q. What did she say the second time she communicated with you?****A. She said she didn't really know where Carole spent her day.****COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**Q. Where did Ms. Lantz spend her day?****A. Out on the floors.****Q. So was Ms. Newmark also expected to spend her day on the floors?****A. Yes.****Q. And the floors being what floor numbers was she expected to spend her days?****A. I don't recall what units she was covering at the time.****Q. Wasn't she covering all the units as a social worker?****A. No, she was not.****Q. Which units was she not covering?****A. I don't recall how I made the assignments.****Q. Who made the assignments, you did?****A. No, Diane Lantz would have made the assignments.****Q. Her responsibilities included a number of units on a number of floors -- this is Ms. Newmark -- isn't that right?****A. It could.****Q. It could? Did you, in fact, ascertain whether she was in those units doing****COMPU-TRAN SHORTHAND REPORTING**

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Catherine Magone**her job?****A. Diane felt that she was in her office too much.****Q. She felt it or she expressed that to you?****A. She expressed that to me.****Q. Did she document that in writing?****A. No, she did not.****Q. Did you document that in writing?****A. No, I did not.****Q. Where was Diane if she was in her units that she knew that Ms. Newmark was in her office too much?****A. She would be looking for her and that's where she would find her.****Q. So she did find her?****A. In her office.****Q. You said she was looking for her --****MR. KEIL: Objection.****Q. -- and she was able to find her?****A. Yes.****Q. So when you said she had been looking for Ms. Newmark, you weren't meaning to suggest she wasn't able to find her, were you?****COMPU-TRAN SHORTHAND REPORTING**

Catherine Magone

A. Well, she wasn't very receptive about returning people's calls.

Q. Did she return your phone calls?

A. Not always.

Q. Did you ever document that in writing?

A. No, but I did speak to her about it.

Q. Did you ever document it in writing as you were good enough to document some incidents --

MR. KEIL: Objection.

Q. Hold on a second.

-- some incidents in writing about

Ms. Newmark's various issues? Did you ever document that fact in writing, that she wasn't good in returning phone calls?

A. No. Because I only started documenting when I had the direct supervision of her.

Q. Ms. Lantz ceased being her direct supervisor when?

A. In July.

Q. Did you ever send E-mails to

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Catherine Magone

Ms. Newmark indicating she was amazing?

A. Yes, I did.

MS. NICAJ: Can you mark this as 11.

A. Actually, what I said is will be amazing.

(Plaintiff's Exhibit 11

5/11/06 Memo marked for identification, as of this date.)

Q. I'm going to direct your attention to Plaintiff's Exhibit 11. Do you see that?

A. Yes, I do.

Q. Now, it says, "Unfortunately I don't have all the right answers, but I will always try and help you to find the resources that you need." What were you referring to?

A. Well, I -- first of all, it is my style to try to bring positive moments when people are new at a job and try to support them when I see they are struggling. And at that time Carole was still struggling, getting used to her job, so I decided to send her a nice E-mail.

Q. Where do you say here that she was

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Catherine Magone

struggling?

A. No. That's what I was perceiving. That's why this was kind of like a little cheerleader.

Q. Does it say that anywhere? Does it say anywhere in words or substance that she was struggling and you were being a little cheerleader as you put it?

A. No.

Q. Can I have that back?

MS. NICAJ: 12, please.

(Plaintiff's Exhibit 12

4/17/06 Nomination for Big Heart Award marked for identification, as of this date.)

Q. I'm going to direct your attention to Plaintiff's Exhibit 12. Do you recognize that?

A. Yes.

Q. Did you ever see this prior to today?

A. Yes.

Q. When was the first time?

A. I don't recall the exact date.

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Catherine Magone

Q. Do you know whether Ms. Newmark received more than one nomination for a big heart award?

A. Not to my knowledge.

Q. Did you ever do anything in connection with receiving the nomination for big heart award with respect to Ms. Newmark?

A. No.

Q. Did you ever have a procedure by which you did do that for other employees?

MR. KEIL: Objection as to

form.

A. It is my style if I think about it, I will try to give recognition to people, but it is not always.

Q. When you say you give recognition to people, what do you do?

A. If I knew about it and thought about it, I might bring it up in line up. But I don't do that all the time.

Q. Did you do that with respect to Ms. Newmark?

A. No.

Q. Apart from Plaintiff's Exhibit 8

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Catherine Magone

and 9, did you ever submit anything else in writing prior to August of 2006 concerning Carole Newmark in her file?

A. No.

(Plaintiff's Exhibit 13

8/31/06 Memo marked for identification, as of this date.)

(Plaintiff's Exhibit 14

9/1/06 Memo marked for identification, as of this date.)

(Plaintiff's Exhibit 15

9/7 Memo marked for identification, as of this date.)

(Plaintiff's Exhibit 16

9/12/06 Memo marked for identification, as of this date.)

Q. I'm going to direct your attention to what is marked as Plaintiff's Exhibit 13. Do you recognize that?

A. Yes, I do.

Q. Exhibit 13, did you ever show this to Ms. Newmark?

A. No, I did not.

Q. You recount what someone by the

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Catherine Magone

name of Susan relayed to you, is that right?

A. Yes.

Q. Did you ever ask Ms. Newmark about her side of the story, so to speak?

A. No, I did not.

Q. Did you ever attempt to ask Ms. Newmark about her side of the story?

A. No.

Q. It says one of the CM staff. Is that case management?

A. Correct.

Q. Susan is -- what is her position?

A. Case manager.

Q. Did you ever speak to Ms. Newmark at any of the meetings you attended with Pat Orsaia about the issue that is relayed in Plaintiff's Exhibit 13?

A. No.

Q. Directing your attention to Plaintiff's Exhibit 14, do you see that?

A. Yes.

Q. This case manager that you are referring to, there are how many case managers in the case management department?

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Catherine Magone

A. Nine.

Q. Colette in this Instance, did you ever ask Ms. Newmark about what her view of this incident was, Plaintiff's Exhibit 14?

A. No, I did not.

Q. Is there a reason why not?

A. Because I called her and asked her to do the PRI.

Q. Did you ask Ms. Newmark?

A. I did ask her why she didn't respond.

Q. What did she say to you?

A. She said to me that she didn't get the message.

Q. Did you put that anywhere in writing?

A. No, I did not.

Q. Directing your attention to Plaintiff's Exhibit 15, what does Plaintiff's Exhibit 15 relate to?

A. It relates to evidence of poor documentation. Patients should not remain in the ICU for two weeks with only one social work note.

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Catherine Magone

Q. Was that placed in Nicole Serra's file?

A. This was a case that Carole was working on.

Q. How do you know it was a case that Carole was working on?

A. Because this was told to me by a case manager.

Q. Where is that stated anywhere in Plaintiff's Exhibit 15? Where is the reference to the particular social worker, Ms. Newmark, Ms. Serra, hold on a second, or the case manager for --

A. That was involved in --

Q. Yes.

A. I have access to MIDAS (ph). We are on Meditech. We are electronic. And I can go in to see what, who is the social worker and when the note was written, so it is a fact.

Q. Why wasn't that stated anywhere in what is Plaintiff's Exhibit 15?

A. I didn't feel it was necessary.

Q. You didn't feel identifying the social worker was necessary?

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Catherine Magone**A. If it is in her file.****Q. Whose file?****A. Carole's file.****Q. What about the case manager you****said you referred to?****A. I didn't include that.****Q. Why not?****A. Well, I felt it was really****irrelevant, because I went into the medical****record myself and saw that what the person told****me was actually true.****Q. What was this person?****A. The case manager when she got to****the floor.****Q. Who is the case manager?****A. I don't recall which case manager****it was.****Q. Okay.****A. It showed no follow up.****Q. Incidentally, by August 31, 2006,****you had been aware that Ms. Newmark had****complained about you about agelsm, isn't that****right?****A. That's correct.**

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Catherine Magone**Q. So there is no reference to which****social worker or case manager. Did you speak to****Ms. Newmark about this?****A. Yes.****Q. Where is that documented?****A. I didn't document it.****Q. What did she say?****A. Over worked, unable to get to all****her cases.****Q. Where is that documented?****A. It is not documented.****Q. Going to Plaintiff's Exhibit 16,****you indicate in this that you spoke to****Ms. Newmark regarding her attendance?****A. That's correct.****Q. UTO is -- what does it stand for?****A. Unscheduled time off.****Q. What did she say with respect to****her need for the time off?****A. She had E-mailed me that she was****taking time off for this procedure. And that's****not the procedure that we follow when you are****requesting time off. There is a form to be****filled out, and it has to be approved by me.**

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Catherine Magone**Q. Did she fill that form out?****A. She did afterwards.****Q. So at that point it wasn't an****unscheduled time off?****A. No. But originally I had wanted to think about whether or not I was going to approve it.****Q. What was the reason for her taking time off that you came to learn?****A. I don't understand the question.****Q. Why did she request the time off?****A. Which time off?****Q. In reference to the --****A. The three --****Q. No. You said I spoke --****A. Oh, she had a procedure, yes, needed a procedure.****Q. What was the procedure?****A. A colonoscopy.****Q. Did you ever show Ms. Newmark any of this correspondence concerning her?****A. No.****Q. Did you ever give her a performance evaluation?**

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Catherine Magone**A. At her termination meeting.****Q. Prior to her termination meeting, did you ever sit with her and go over her performance?****A. The performance evaluation, per se?****Q. Performance evaluation, yes.****A. No.****(Plaintiff's Exhibit 17****10/5/06 Memo marked for identification, as of this date.)****Q. Directing your attention to****Plaintiff's Exhibit 17, what was the purpose of this memo to file and copy to Pat Orsaia?****A. I did this at the request of Pat Orsaia.****Q. And was this to delineate the reasons you decided to terminate Ms. Newmark's employment?****A. To recap.****Q. And was one of the reasons Carole's reaction to a business decision to assign another team member to a palliative program was unacceptable?****A. Correct.**

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Catherine Magone

Q. And her reaction involved going to Pat Orsaia and complaining about ageism?

A. No.

Q. What did it involve?

A. Negativity.

Q. What negativity are you referring to?

A. Negative behavior in general. Going around -- I got information from Maura Del Bene that she could not let it go. She was harping on it all day long, unable to perform her duties because she was so upset about it, about not getting the palliative care position.

Q. Where was that communicated by you concerning what Ms. Del Bene said to you?

MR. KEIL: Objection as to form.

Q. Did you reduce what Ms. Del Bene said to you in writing anywhere?

A. No.

Q. Did you ask Ms. Newmark what her reaction as relayed to you by Ms. Del Bene was?

A. No.

MR. KEIL: Objection.

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Catherine Magone

Q. So Carole's reaction to a business decision didn't mean Ms. Newmark repeatedly asking to meet with Pat Orsaia and you concerning the fact that she believed you were subjecting her to an age discrimination?

A. No.

Q. It wasn't based on that?

A. No.

Q. What happened, if anything, between the September 28 meeting and the October 5 meeting -- termination of Ms. Newmark's employment?

A. She started to decompensate.

Q. Decompensate, what do you mean?

A. She was so angry that she couldn't get her work done. She was visibly angry.

Q. Where is that contained in writing that she was visibly angry and couldn't get her work done?

A. She was visibly angry and she was talking amongst the other case managers and social workers.

Q. In your presence?

A. No, but I was hearing about it.

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Catherine Magone

Q. September 28 was the date in which she expressed her concern about the fact that you advised her you were selecting Ms. Serra because of her age, and October 5 she was decompensating. Is that what you are saying?

A. No. She was decompensating ever since she found out that Nicole, before Pat and I even ever met to -- with me to discuss it.

Q. Where was that ever in writing? Where did you ever reduce that to writing?

A. It is not in writing.

Q. In her E-mail to Pat Orsaia, which Pat Orsaia forwarded to you, you never accused her of being angry or anything of that nature with respect to appointing Nicole Serra, right?

MR. KEIL: Objection as to form. Can you read the question back?

MS. NICAJ: I'll withdraw

it.

Q. September 28 was the meeting with Pat Orsaia.

A. Correct.

Q. Ms. Newmark followed up with her again her concerns about age related ageism

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which you selected Nicole Serra, is that right?

A. That's correct.

Q. You received that communication --

A. Yes.

Q. -- from Pat Orsaia?

A. Yes.

Q. Did you ever in any subsequent communication to Ms. Newmark indicate in words or substance that she was handling the matter irrationally, that she was being angry, that you heard from other people that she was decompensating? I don't know what that means, but I'm using your word, decompensating.

A. No.

(Plaintiff's Exhibit 18 5/23/06 Memo marked for identification, as of this date.)

Q. I'm going to direct your attention to Plaintiff's Exhibit 18 for identification. Do you recognize that document?

A. I do.

Q. Did you ever respond to Ms. Newmark in writing?

A. I don't recall.

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Catherine Magone

(Plaintiff's Exhibit 19

9/19/06 Memo marked for identification, as of this date.)

Q. I'm going to show you what's been

marked as Exhibit 19 for identification. Do you see that?

A. Yes.

Q. Did you communicate with

Ms. Newmark about what is marked as Plaintiff's Exhibit 19?

A. I communicated with her regarding that there had been no note and no plan on this patient.

Q. Did you reduce that in writing?

A. I did not.

Q. Do you know what Colette Gelardi meant by just thought you might like to know, hope you are having a good time if you pick this up?

A. I was on vacation.

(Plaintiff's Exhibit 20

9-page Performance Evaluation marked for identification, as of this date.)

Q. I'm going to direct your attention

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Catherine Magone

to what's been marked as Plaintiff's Exhibit 20 for identification. Do you recognize that exhibit?

A. Yes.

Q. What do you recognize it to be?

A. It is the performance evaluation for Carole Newmark.

Q. Do you see on the very first page of that document, I'm going to direct your attention, it says "Date of hire," very first page. Date of hire is March 20, 2006?

A. Correct.

Q. How long was the probationary period?

A. Six months.

Q. And that expired September 20, 2006, is that right?

A. That's correct.

Q. And you communicated an extension of probationary period on September 28, 2006?

A. Actually, it is the policy of the hospital that you have 30 days from the time the evaluation is due to give the evaluation.

Q. The evaluation or the probationary

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Catherine Magone

period?

A. I don't know.

(Plaintiff's Exhibit 21

24-page Human Resource Policies and Procedures Guide marked for identification, as of this date.)

Q. I'm going to show you what has been marked as Plaintiff's Exhibit 21 for identification. Directing your attention to -- I'm going to read to you, it is Lawrence Hospital Human Resources Policies and Procedures Guide. I have them Bates stamped N 423 through N 446. To your knowledge, was Ms. Newmark a non-exempt employee or an exempt employee?

A. Exempt.

Q. That means what?

A. Where are you? I'm asking you.

Q. That means what?

A. What does an exempt employee mean?

Q. Yes.

A. It's a salaried employee.

Q. To your knowledge, how long is probationary period for a salaried employee?

A. Six months.

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Q. For 180 days?

A. Yes.

Q. It says here probationary period may be extended. I direct your attention to 424 at the bottom, overview of probationary periods, 1.2. And the third sentence of that paragraph which reads -- or the fourth, actually -- "Extensions should have the approval of human resources." Do you see that?

A. Yes.

Q. Did you ever receive the approval of human resources?

A. Yes.

Q. Did you document it? Did you put your request in writing?

A. No.

Q. Did you notify Ms. Newmark in writing?

A. No.

Q. It says, 1.3, if at any time prior to the completion of the probationary period either the employee or the manager has reason to believe that successful completion is not possible, then it lists two alternatives, and

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Catherine Magone

one of the alternatives is if an opportunity for transfer does not exist, then employment will be terminated. Do you see that?

A. Yes.

Q. Was Ms. Newmark ever terminated during that probationary period that expired on September 20, 2006?

A. As far as I am concerned, she was still in the probationary period.

Q. You communicated to her that period?

MR. KEIL: Objection to the form.

Q. Did you communicate with Ms. Newmark that her probationary period was going to be extended after -- before September 20, on or before September 20, 2006?

A. No.

Q. When did you first communicate with her that her probationary period was going to be extended, at the September 28 meeting, isn't that right?

A. I think it was prior to that.

Q. When prior to that?

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Catherine Magone

A. It's in one of these memos. I don't recall.

Q. You saw in her E-mail on September 29, expressing concern about how her probationary period had not been explained in terms of the extension to her until the September 28 meeting, isn't that right?

MR. KEIL: Objection. Could you rephrase that?

MS. NICAJ: It's okay. I'm going to show you her E-mail.

Q. I'm going to direct your attention to what has been previously marked Plaintiff's Exhibit 5.

A. I thought that there was another meeting prior to this where I had mentioned it. Now I'm like -- I thought it was reiterated again at that meeting. I didn't see anything today that reflected that? I thought I did. I don't recall.

Q. Did you ever put anything in writing to her that you were extending her probationary period, Ms. Newmark?

A. No.

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Catherine Magone

Q. What interactions, if any, did you have with Ms. Newmark from September 28 until October 5?

A. I don't recall.

Q. Did the appointment of Nicole Serra by you to the palliative care unit or care services come with any additional money, salary?

A. No.

Q. Any additional benefits, compensation?

A. No.

Q. Apart from what you've already testified to, do you recall ever meeting with Pat Orsaia to communicate your concerns about Carole Newmark?

A. I don't recall.

Q. Were you ever interviewed in connection with Ms. Newmark's complaint about age discrimination on your part?

MR. KEIL: Apart from discussions with counsel?

MS. NICAJ: I'm not talking about -- I mean during her employment at the hospital.

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Catherine Magone

A. I don't understand the question.

Q. Were you ever interviewed in connection with Ms. Newmark's complaint about age discrimination?

A. Well, Pat Orsaia and I had a discussion about it. I wouldn't call that an interview.

Q. What was the discussion exactly, what you already related to me?

A. Yes.

Q. That was the extent of it?

A. Yes.

Q. Did anyone else from human resources ever communicate with you about that issue, while Ms. Newmark was employed at the hospital?

A. No.

Q. Did the head of HR ever speak to you about that issue while she was employed at the hospital?

A. Not to my knowledge. Not to my recollection, no.

Q. Were you about to say something?

A. I remember a name.

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Catherine Magone

Q. What name did you remember?

A. The VP for HR. The in between VP from HR before Tom is Bob Greco.

(Plaintiff's Exhibit 22

6-page Management Performance Appraisal marked for identification, as of this date.)

Q. I'm going to direct your attention to what has been marked Plaintiff's Exhibit 22 for identification. Do you see that?

A. Yes.

Q. Do you recognize that document?

A. I do.

Q. What do you recognize it to be?

A. It is my 2004 performance appraisal.

Q. I'm going to direct your attention specifically to page or Bates stamp No. N 384. That is the second page of that exhibit.

A. Correct.

Q. Under the comments section of it, under people development and management --

A. Correct.

Q. -- on the right-hand side, it says,

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"Attempt to promote teamwork but have been unsuccessful in eliminating staff unrest." What does that relate to?

A. I wrote that. That's my statement.

Q. What did you mean by that?

A. Because I was -- at the time we had some personality issues within the department, and I was working hard to improve them. So I was a little hard on myself.

Q. What personality issues?

A. Just like in any kind of -- any department, where you are trying to build teamwork particularly in --

Q. It says staff unrest. What did you mean by "staff unrest"?

A. Staff unrest, from 2004, I don't recall. Just people not necessarily getting along, not being happy.

Q. With you?

A. No, no, not with me. With one another, with one another.

Q. What was the staff unrest coming from?

A. Change.

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Q. Which staff members?

A. Case managers, social workers there is always --

Q. Their names?

A. Oh, I don't have any recollection of who it might be at that time. It could be any one of them on any given day. It's a difficult job, case management. So it is very stressful. It involves a lot of interaction with one another. Social workers and case managers historically have issues with one another. Nurses and social workers, that's just history.

Q. Whose writing, if you know, is below that?

A. That is Dr. Roeder.

Q. Did you meet with Dr. Roeder with respect to that?

A. He gives me my performance evaluation. This was a self evaluation that he either agrees with or not.

Q. Did he ask you why the staff unrest, what the issue was?

A. I'm sure we discussed it.

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Catherine Magone

Q. Do you recall what you said?

A. Just staff unrest as a whole. Not -- it's an ongoing issue.

Q. It says at the very last page of that -- I'm gathering it should be appraiser's comments instead of praiser's comments. It is cut off, it looks like.

A. Yes.

Q. It says, "Discussed methods to define and/or eliminate staff unrest."

A. Right.

Q. What did Dr. Roeder say with respect to that?

A. Well, at the time the two of us were unclear on why there was some staff unrest. There were some members of the department that were having a difficult time still with the new case management model -- I had people from the old model mixed with people from the new model -- and discussed how we could do better with team building skills.

Q. So there was an issue with the case management model?

A. No, no issue with the case

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Catherine Magone

management model, just as a manager trying to promote teamwork.

Q. So you said there were issues. Now there no issues with the case management model?

A. No, there were no issues. This is personalities and letting women and men, people getting along with one another.

Q. Which men and women?

A. There were no men. I'm just saying.

Q. Which staff members?

A. Nobody in particular. We had a very -- we had a very tough year. We had to get length of stay down, so we had to play hard ball. And sometimes people get stressed and get upset. So we -- Dr. Roeder -- I put this in myself. I'm recognizing that myself. It wasn't a criticism on his part.

Q. I'm asking you simply what --

A. I don't recall at the time. It was 2004.

Q. Let me finish asking the question.

I'm asking you what you meant by staff unrest, and then I also asked you what was

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discussed as to the discussed methods to define and/or eliminate staff unrest?

A. It is one of the things we decided to do is we put money in the budget so we could get case managers to get to go on conferences so they would feel more fulfilled and rewarded. That was one of the things we did that year.

Q. Did anyone ever advise you in words or substance that the staff was communicating their concerns about you --

A. No.

Q. -- to anyone?

A. No.

Q. You are considered a manager as a director, is that right?

A. Right.

Q. Have you had any discrimination complaints brought by any employees in your department apart from Ms. Newmark?

A. Yes.

Q. Which employees?

A. It wasn't a formal complaint.

Q. It doesn't matter.

A. It was an informal complaint.

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Catherine Magone

Cheryl Anderson.

Q. With respect to what?

A. Racial.

Q. Against you?

A. Yes. There was no formal written complaint.

Q. When did she bring the racial complaint against you?

A. In September.

Q. Of?

A. Of '07.

Q. To whom?

A. Linda Smith.

Q. Ms. Smith's position is what?

A. Director of HR.

Q. Were you interviewed for that in reference to that complaint?

A. Yes.

Q. Did you provide a written statement?

A. No.

Q. What was Ms. Anderson's allegation?

A. Ms. Anderson had been out with a broken leg for twelve weeks. And when she

COMPU-TRAN SHORTHAND REPORTING

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Catherine Magone

returned -- I covered for her while she was gone. When she returned -- I can't even remember what it was that she said. When she returned we met and I went over some changes that I was going to be instituting in her keeping me abreast of what was going on. Because she was gone for so long, I had to basically do the job. And she made a comment to HR that I criticized her for the way she was standing at line up because black people stand that way.

Q. That was the nature of her complaint?

A. Yeah.

Q. That was as far as you know the entirety of her complaint?

A. Yeah.

Q. What happened in connection with that complaint?

A. It was found unfounded.

Q. When you say it was found unfounded, what do you mean by that?

A. Nothing went with it.

Q. Who found it unfounded?

COMPU-TRAN SHORTHAND REPORTING

Catherine Magone

A. Well, there was no merit to it, so nothing happened.

Q. When you say it was found unfounded, who determined it was unfounded?

A. HR. But the decision was made to have her report directly to the medical director at that time.

Q. Who in HR found that it was unfounded?

A. Linda Smith.

Q. Did she ever communicate that in writing to you?

A. No. Well, I guess it wasn't unfounded. I denied it.

Q. Do you know whether Ms. Anderson was interviewed?

A. Yes.

Q. You were interviewed?

A. Yes.

Q. Was anyone else interviewed in connection with her complaint?

A. No.

Q. So you don't know whether it was in fact unfounded, is that right, or whether HR

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Catherine Magone

found, is that right?

MR. KEIL: Objection as to form. Can you rephrase that, please?

MS. NICAJ: Sure.

Q. When you say it was found unfounded, what is the basis of your statement?

A. Well, I wasn't counseled for it. So --

Q. As a manager what is the process by which employees can make a complaint of discrimination about a supervisor or fellow employee?

A. Whenever they have any concerns, they can go to human resources with their concerns. Specifically for discrimination, I do not know.

Q. Have you been trained in connection with that, how to handle discrimination complaints?

A. No, I have not.

Q. Do you know what, if anything, was found in connection with Ms. Newmark's complaint while she was an employee in the hospital of age discrimination?

COMPU-TRAN SHORTHAND REPORTING

Catherine Magone

A. I don't know what you mean.

Q. Did Pat Orsaia ever state to you what Ms. Newmark accused you of was unfounded?

A. Well, he said/she said, isn't it?

Q. I'm asking you a question.

MR. KEIL: Listen. Could you read the question back, please.

(Record read.)

A. No.

(Recess taken.)

(Plaintiff's Exhibit 23

4/12/06 Memo marked for identification, as of this date.)

Q. I'm going to direct your attention to Plaintiff's Exhibit 23 for identification.

Do you recognize that document?

A. I do.

Q. What do you recognize it to be?

A. An E-mail sent from Carole to me.

Q. Concerning?

A. Social work coverage.

Q. It indicates here that there was -- was there a time that Joanne Reed worked as a social worker?

COMPU-TRAN SHORTHAND REPORTING

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Catherine Magone

A. She was an agency social worker, yes.

Q. She was going to be covering 5N, 5S and ER. And it indicates that I, meaning Ms. Newmark, will be covering all of the other floors and Joanne will help me if needed.

Do you know which floors she was referring to, Ms. Newmark?

A. She would be referring to 3 north -- all the other floors, 3 north, 5 north -- she said 5. 5 north, 5 south, ER. It would be 3 north, 6 north, and -- what's left -- the ICU. I think that's it.

Q. I'm sorry. Are you done with your response?

A. Yes.

Q. Are there any changes or things you want to supplement to your previous testimony?

A. No.

MR. KEIL: Are we done?

MS. NICAJ: Yes.

(Examination concluded at 2:55 p.m.)

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STATE OF NEW YORK)
 ss:
 COUNTY OF WESTCHESTER)

I, CATHERINE MAGONE, the witness
 herein, having read the foregoing testimony of
 the pages of this deposition, do hereby certify
 it to be a true and correct transcript, subject
 to the corrections, if any, shown on the
 attached page.

oOo

CATHERINE MAGONE

Subscribed and sworn to before me
 this ____ day of ____, 20__.

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STATE OF NEW YORK)
) ss
 COUNTY OF WESTCHESTER)

I, Nina Purcell, Notary
 Public within and for the State of New
 York, do hereby certify:

That I reported the proceedings in the
 within entitled matter, and that the within
 transcript is a true record of said
 proceedings.

I further certify that I am not
 related to any of the parties to the action by
 blood or marriage, and that I am in no way
 interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
 set my hand this 25th day of February, 2008.

NINA PURCELL,
 NOTARY PUBLIC

COMPU-TRAN SHORTHAND REPORTING

CORRECTION SHEET

Re: Newmark v. Lawrence Hospital

The following corrections, additions
 or deletions were noted on the transcript of the
 testimony which I gave in the above-captioned
 matter, held on February 20, 2008.

PAGE(S) LINE(S) SHOULD READ

CATHERINE MAGONE
 COMPU-TRAN SHORTHAND REPORTING

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EXHIBIT 25

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAROLE NEWMARK,

Plaintiff,

-against-

LAWRENCE HOSPITAL CENTER,
PAT ORSAIA, individually &
CATHY MAGONE, individually,
Defendants.

222 Bloomingdale Road
White Plains, New York
March 3, 2008
10:00 a.m.

Examination before Trial of PAT ORSAIA, a
defendant held pursuant to Court Order, at the
above time and place, before a Notary Public
of the State of New York.

Lisa Regen,
Court Reporter

COMPU-TRAN SHORTHAND REPORTING

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1

FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and
between the attorneys for the respective parties
herein, that the sealing and filing of the
within deposition be waived; that such
deposition may be signed and sworn to before any
officer authorized to administer an oath, with
the same force and effect as if signed and sworn
to before the officer before whom said
deposition is taken.

IT IS FURTHER STIPULATED AND AGREED, that
all objections, except as to form, are reserved
to the time of trial.

COMPU-TRAN SHORTHAND REPORTING

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1

APPEARANCES:

LOVETT & GOULD, ESQUIRES
Attorneys for the Plaintiff
222 Bloomingdale Avenue
White Plains, New York 10605
BY: DRITA NICAJ, ESQUIRE

COLLAZO, CARLING & MISH, LLP
Attorneys for the Defendants
747 Third Avenue
New York, New York 10017
BY: JOHN P. KEIL, ESQUIRE

ALSO PRESENT:

CAROLE NEWMARK

COMPU-TRAN SHORTHAND REPORTING

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1

PAT ORSAIA,
having been duly sworn by Lisa Regen,
a Notary Public within and for the State
of New York, was examined and testified
as follows:

o0o

EXAMINATION BY MS. NICAJ:

Q. Good morning, Ms. Orsala. My name
is Drita Nicaj. I represent the plaintiff in
this action, Carole Newmark. I will be asking
you a series of questions today. I'm looking for
truthful and responsive answers. Okay?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. If there is anything that you don't
understand, haven't heard the question, or want
the question read back, let me know. Okay?

A. I will.

Q. Also, the court reporter can't take
down "uh-huhs." All your responses need to be
verbal. That is, yes or no if applicable, or

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 just full responses. Okay?
 3 **A. Yes.**
 4 **Q.** She also can't take nods of the head
 5 down. Okay?
 6 **A. I understand.**
 7 **Q.** If at any time you want to take a
 8 break, you can do so; but I would ask you to, if
 9 there are any pending questions - that is, any
 10 questions that have not been fully responded to -
 11 first answer the question, and then you can take
 12 your break. Okay?
 13 **A. Yes.**
 14 **Q.** If at any time you want to add,
 15 change, or otherwise supplement a response, let
 16 me know. I will be happy to give you an
 17 opportunity to do that. Okay?
 18 **A. Yes.**
 19 **Q.** And if you have answered a question,
 20 I'm going to assume that you have understood it.
 21 Is that a fair assumption?
 22 **A. Yes. If I have not understood it,**
 23 **I'll ask you to clarify for me.**
 24 **Q.** Okay. So, you have answered. Then,
 25 you would have understood the question; is that
 COMPU-TRAN SHORTHAND REPORTING

6

1 **Pat Orsaia**
 2 right?
 3 **A. Yes.**
 4 **MR. KEIL:** Also, just wait
 5 for Ms. Nicaj to finish her complete
 6 question before you respond because the
 7 court reporter can't take down two people
 8 talking at once.
 9 **Q.** When I'm talking and asking
 10 questions, there is a fair chance you may know
 11 what I'm about to ask you, but I may go to a
 12 different area. So, also wait for my question on
 13 that basis, too. Okay?
 14 **A. Yes.**
 15 **Q.** Are you employed?
 16 **A. Yes, I am.**
 17 **Q.** By whom?
 18 **A. Meridian Healthcare.**
 19 **Q.** And in what capacity?
 20 **A. Site manager, human resources.**
 21 **Q.** Where do you work?
 22 **A. You're asking me the address?**
 23 **Q.** Yes.
 24 **A. The address is 1430 Route 34,**
 25 **Neptune, New Jersey.**

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 **Q.** Do you work in any other offices for
 3 Meridian?
 4 **A. In the course of my job**
 5 **responsibilities, I actually can travel to more**
 6 **than thirty Meridian locations across Monmouth**
 7 **and Ocean Counties in New Jersey.**
 8 **Q.** That is your central location?
 9 **A. That is where my office is located,**
 10 **yes.**
 11 **Q.** How long have you worked there?
 12 **A. Since January of 2007.**
 13 **Q.** Previous to that, where did you
 14 work?
 15 **A. I worked -- previous to my current**
 16 **place of employment, I worked at Lawrence**
 17 **Hospital Center.**
 18 **Q.** At the time you ceased working at
 19 Lawrence Hospital Center, what was your position?
 20 **A. Director of human resources.**
 21 **Q.** When was your last day of employment
 22 at Lawrence?
 23 **A. I believe the date was January 12,**
 24 **2007.**
 25 **Q.** When did you commence employment at
 COMPU-TRAN SHORTHAND REPORTING

8

1 **Pat Orsaia**
 2 Lawrence?
 3 **A. January 29th, 2007 -- I'm sorry**
 4 **commence employment at Lawrence?**
 5 **Q.** Yes.
 6 **A. I believe the date was April 6,**
 7 **2002.**
 8 **Q.** At the commencement of your
 9 employment at Lawrence, what was your position
 10 there?
 11 **A. My title when I began employment at**
 12 **Lawrence was manager, human resources**
 13 **development.**
 14 **Q.** Was there a change in title, or what
 15 were the circumstances in which you went from
 16 being manager of HR development, to director of
 17 HR?
 18 **A. I was promoted to director of human**
 19 **resources.**
 20 **Q.** When were you promoted?
 21 **A. I don't recall the exact date. As**
 22 **near as I can recall, it was approximately a year**
 23 **after I started employment at Lawrence.**
 24 **Q.** Did anyone previously occupy the
 25 director of HR position?

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 **A. No. I believe it was a newly**
 3 **created level in the human resources department**
 4 **at Lawrence at that time.**
 5 **Q. Do you know who created the**
 6 **position?**
 7 **A. The vice-president of human resources.**
 8 **Q. That person is who -- or was, at**
 9 **that time?**
 10 **A. The person at that time, was Deborah**
 11 **Gogliettino.**
 12 **Q. What were the circumstances in which**
 13 **you ceased employment at Lawrence?**
 14 **A. I resigned my position at Lawrence**
 15 **Hospital Center, because I was relocating with my**
 16 **husband to go out of state.**
 17 **Q. Do you know someone by the name of**
 18 **Carole Newmark?**
 19 **A. Yes.**
 20 **Q. How do you know Ms. Newmark?**
 21 **A. Ms. Newmark was employed at Lawrence**
 22 **Hospital Center during my tenure there.**
 23 **Q. Do you know whether Ms. Newmark had**
 24 **been employed by Lawrence Hospital previous to**
 25 **your tenure at some point or another?**

COMPU-TRAN SHORTHAND REPORTING

10

1 **Pat Orsaia**
 2 **A. I don't know for sure, but I do**
 3 **recall some conversation -- I believe that**
 4 **Ms. Newmark told me, herself, that she had been**
 5 **employed at Lawrence previous to the time when we**
 6 **were employed there together.**
 7 **Q. Do you recall when Ms. Newmark told**
 8 **you?**
 9 **A. I believe she told me the first time**
 10 **we met, which was, I believe, after she had**
 11 **accepted the offer of employment and before she**
 12 **actually started work. I recall that we were**
 13 **introduced in the waiting area of the human**
 14 **resources office.**
 15 **Q. Do you recall what words, in**
 16 **substance, she said?**
 17 **A. I'm sorry; I didn't hear the**
 18 **question.**
 19 **Q. What, in words or substance, did she**
 20 **say to you at that time?**
 21 **A. We were introduced. We were**
 22 **introduced actually by Ms. Newmark's daughter,**
 23 **who was also employed at Lawrence Hospital**
 24 **Center.**
 25 **We were introduced. I was told**

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 **that -- she shared that she was starting work**
 3 **there, I believe to do some new-hire paperwork.**
 4 **I welcomed her. That was really it.**
 5 **Q. What is Ms. Newmark's daughter's**
 6 **name?**
 7 **A. Janice. I believe her last name was**
 8 **Powers.**
 9 **Q. At that time, what was her position?**
 10 **A. Janice was one of two people**
 11 **employed in the -- I'm trying to remember the**
 12 **exact name of the department. The person that**
 13 **Janet reported to was the director of service**
 14 **excellence. I don't recall Janice's title,**
 15 **exactly. She was employed in a clerical**
 16 **capacity, reporting to the director of service**
 17 **excellence.**
 18 **Q. At the time of Ms. Newmark's hire,**
 19 **who was her supervisor, if you know?**
 20 **A. Who was Ms. Newmark's supervisor?**
 21 **Q. Yes.**
 22 **A. The director of the department was**
 23 **Cathy Magone.**
 24 **Q. And the department which Ms. Newmark**
 25 **was hired to, was what?**

COMPU-TRAN SHORTHAND REPORTING

12

1 **Pat Orsaia**
 2 **A. Case management and social work.**
 3 **Q. Was Ms. Magone already hired when**
 4 **you started your employment at Lawrence?**
 5 **A. Yes.**
 6 **Q. Prior to your deposition here today,**
 7 **did you review any documents in connection with**
 8 **preparing for your deposition?**
 9 **A. Yes.**
 10 **Q. What documents?**
 11 **A. I reviewed the probationary**
 12 **performance evaluation that was issued to**
 13 **Ms. Newmark. I reviewed a piece of correspondence,**
 14 **which was the termination letter that I had sent**
 15 **to Ms. Newmark. I reviewed some e-mails that had**
 16 **either been sent to me directly, or I had been**
 17 **copied on.**
 18 **Q. Anything else?**
 19 **A. Not that I recall.**
 20 **Q. Did you meet with anyone, or discuss**
 21 **with anyone your deposition, before you came here**
 22 **today?**
 23 **A. Yes.**
 24 **Q. With whom?**
 25 **A. John Keil.**

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

10:10:47AM **2 Q.** Was this by telephone or at a
 10:10:51AM **3 meeting?**
 10:10:55AM **4 A.** By telephone.
 10:11:00AM **5 Q.** When?
 10:11:05AM **6 A.** It was prior to the original date of
 10:11:10AM **7 this deposition. The original date, I believe,**
 10:11:15AM **8 was February 22nd, and I spoke with John the day**
 10:11:20AM **9 prior to that.**
 10:11:25AM **10 Q.** How long did you speak to Mr. Keil?
 10:11:30AM **11 A.** Somewhere between 60 and 90 minutes.
 10:11:35AM **12 Q.** Apart from your communication with
 10:11:40AM **13 Mr. Keil, did you communicate with anyone else in**
 10:11:45AM **14 connection with your deposition here?**
 10:11:50AM **15 A.** No.
 10:11:55AM **16 Q.** Have you communicated with
 10:12:00AM **17 Ms. Magone relating to the claims in this?**
 10:12:05AM **18 MR. KEIL:** At any time or --
 10:12:10AM **19 MS. NICAJ:** At any time.
 10:12:15AM **20 A.** I guess I would need some
 10:12:20AM **21 clarification on the question; because when you**
 10:12:25AM **22 say this action, does that include the complaint**
 10:12:30AM **23 to the EEOC prior to this?**
 10:12:35AM **24 Q.** Let me -- okay. Have you spoken to
 10:12:40AM **25 Ms. Magone since you ceased your employment at**
 10:12:45AM **COMPU-TRAN SHORTHAND REPORTING**

Pat Orsaia

10:12:46AM **2 A.** Repeat the question.
 10:12:51AM **3 Q.** You indicated previously that the
 10:12:56AM **4 first communication was with reference to your**
 10:13:01AM **5 friend, who was a patient at Lawrence; right?**
 10:13:06AM **6 A.** Correct.
 10:13:11AM **7 Q.** What was the second communication
 10:13:16AM **8 with Ms. Magone?**
 10:13:21AM **9 A.** The second communication was with
 10:13:26AM **10 Cathy Magone, and it was after her deposition in**
 10:13:31AM **11 this matter.**
 10:13:36AM **12 Q.** When? Do you recall what date that
 10:13:41AM **13 occurred?**
 10:13:46AM **14 A.** I don't recall the exact date.
 10:13:51AM **15 Q.** What, in words or substance, did she
 10:13:56AM **16 say to you?**
 10:14:01AM **17 A.** In substance, she said that she had
 10:14:06AM **18 completed her deposition. She had an awareness**
 10:14:11AM **19 that mine was scheduled. There wasn't much more**
 10:14:16AM **20 substance to the conversation.**
 10:14:21AM **21 Q.** How long was your communication with
 10:14:26AM **22 Ms. Magone?**
 10:14:31AM **23 A.** How long was the telephone conversation?
 10:14:36AM **24 Q.** Yes.
 10:14:41AM **25 A.** Ten minutes, approximately.
 10:14:46AM **COMPU-TRAN SHORTHAND REPORTING**

Pat Orsaia

10:14:51AM **2 Lawrence?**
 10:14:56AM **3 A.** Yes.
 10:15:01AM **4 Q.** Okay. Relating to what?
 10:15:06AM **5 A.** I spoke with Cathy Magone -- the
 10:15:11AM **6 first time I spoke to her since my employment,**
 10:15:16AM **7 was to ask her help with a personal friend of**
 10:15:21AM **8 mine, who was a patient at Lawrence Hospital**
 10:15:26AM **9 Center. And I asked for her help to -- not help**
 10:15:31AM **10 so much as to make her aware that I had a**
 10:15:36AM **11 personal friend, who was a patient at Lawrence**
 10:15:41AM **12 and might need some help from her area, from her**
 10:15:46AM **13 department.**
 10:15:51AM **14 Q.** Apart from that communication, have
 10:15:56AM **15 you had any other communications with Ms. Magone**
 10:16:01AM **16 since you ceased employment at Lawrence?**
 10:16:06AM **17 A.** Yes.
 10:16:11AM **18 Q.** On how many occasions have you
 10:16:16AM **19 communicated with Ms. Magone?**
 10:16:21AM **20 A.** Since I left employment at Lawrence,
 10:16:26AM **21 I have communicated with Cathy Magone twice, that**
 10:16:31AM **22 I can recall.**
 10:16:36AM **23 Q.** The first, referencing your friend?
 10:16:41AM **24 A.** Yes.
 10:16:46AM **25 Q.** And the second was what?
 10:16:51AM **COMPU-TRAN SHORTHAND REPORTING**

Pat Orsaia

10:16:56AM **2 Q.** So, in that ten-minute time, she
 10:17:01AM **3 said she had completed her deposition, and that**
 10:17:06AM **4 was the substance of your ten-minute**
 10:17:11AM **5 communication with her?**
 10:17:16AM **6 A.** Well, we also talked about some
 10:17:21AM **7 mutual colleagues, who were still at Lawrence.**
 10:17:26AM **8 And I inquired about them, how they were doing,**
 10:17:31AM **9 how things generally were at the hospital, et**
 10:17:36AM **10 cetera. We talked about family a little bit.**
 10:17:41AM **11 Q.** When did you communicate with Miss --
 10:17:46AM **12 withdrawn.**
 10:17:51AM **13 Who communicated with whom? Who**
 10:17:56AM **14 telephoned who?**
 10:18:01AM **15 A.** I telephoned Cathy; I left her a
 10:18:06AM **16 voice message, and she telephoned me back.**
 10:18:11AM **17 Q.** Do you recall when you telephoned
 10:18:16AM **18 her?**
 10:18:21AM **19 A.** I don't recall the exact date.
 10:18:26AM **20 Q.** Do you know whether it was, in fact,
 10:18:31AM **21 the day after her deposition or the day of her**
 10:18:36AM **22 deposition that you communicated with her?**
 10:18:41AM **23 A.** It was not the day of her
 10:18:46AM **24 deposition. It was sometime after that.**
 10:18:51AM **25 Q.** You indicated that you communicated
 10:18:56AM **COMPU-TRAN SHORTHAND REPORTING**

Pat Orsaia

1 with Mr. Keil the day before your deposition,
 2 which was scheduled on February -- your
 3 originally scheduled deposition, which was on
 4 February 22nd; is that right?
 5
 6 **A. Yes.**
 7 **Q. Do you recall whether Ms. Magone's**
 8 **deposition was on February 20th?**
 9 **A. I don't recall the exact date of**
 10 **Cathy's deposition, no.**
 11 **Q. Do you know whether you communicated**
 12 **with Ms. Magone prior to your scheduled**
 13 **deposition?**
 14 **A. The originally scheduled deposition?**
 15 **Q. Yes.**
 16 **A. Yes.**
 17 **Q. Did you or she speak about what it**
 18 **was she testified to during her deposition?**
 19 **A. Not the detail of it, no.**
 20 **Q. What did you speak about concerning**
 21 **her deposition?**
 22 **A. She shared that it had been a long**
 23 **day, that her deposition had lasted several**
 24 **hours. It was tiring. I think she used the word**
 25 **"tiring." She shared with me who had been**

COMPU-TRAN SHORTHAND REPORTING

18

Pat Orsaia

1 present at the deposition. She said John was
 2 there, Ms. Newmark, yourself. We may have talked
 3 about the location, the fact that I was coming
 4 from New Jersey, and the location of your
 5 offices, et cetera.

6 That's what I recall of our
 7 conversation.

8 **Q. Do you recall whether she told you**
 9 **anything about the substance of any testimony she**
 10 **provided during her deposition?**

11 **A. No.**

12 **Q. Are there any documents you can use**
 13 **to refresh your recollection?**

14 **A. No.**

15 **Q. What was the purpose in your calling**
 16 **Ms. Magone?**

17 **A. You're talking about the second time**
 18 **I called her?**

19 **Q. No. You indicated that you left her**
 20 **a voicemail and --**

21 **A. Yes.**

22 **Q. What was the purpose of that**
 23 **telephone communication?**

24 **A. I believe I said in my message that --**

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1 I identified myself. I said, I would like to say
 2 hi to you. I hope you're doing well. I left her
 3 my number, where I could be reached at work.
 4 She left -- she received my
 5 voicemail message. She left me a message back.
 6 Said, hi; it was nice to hear from you. It would
 7 be nice to chat if we can connect.

8 And then I think I called her back
 9 again, and that is when we actually spoke live.

10 **Q. The purpose was because you -- of**
 11 **your communication was -- withdrawn.**

12 The purpose of your communication
 13 with Ms. Magone was, what?

14 **MR. KEIL: Why did you call**
 15 **Ms. Magone in the first place?**

16 **THE WITNESS: I called her**
 17 **to-- because I had an awareness that her**
 18 **deposition had happened. I wanted to**
 19 **touch base with her, let her know that**
 20 **mine had been scheduled, see how she was,**
 21 **say hello as a colleague.**

22 **Q. How did you know that she had her**
 23 **deposition?**

24 **A. I had an awareness of the dates from**
 25 **COMPU-TRAN SHORTHAND REPORTING**

20

Pat Orsaia

1 Mr. Keil.
 2 **Q. Apart from Ms. Newmark, during the**
 3 **course of your employment at Lawrence, did anyone**
 4 **ever communicate any concern they had concerning**
 5 **Cathy Magone?**

6 **A. In what regard?**

7 **Q. In any regard.**

8 **A. I recall there was one individual, a**
 9 **case manager who came to see me after she had**
 10 **been issued a formal corrective action by Cathy**
 11 **Magone, and she came to see me in my capacity as**
 12 **director of human resources, to -- I believe she**
 13 **had the document with her, a copy of the document**
 14 **with her. And she asked me to clarify for her,**
 15 **just the nature of the corrective action. I**
 16 **believe she wanted me to verify that it was done**
 17 **as per policy, et cetera.**

18 **Q. Who was this person?**

19 **A. First name was Barbara. I don't**
 20 **recall her last name.**

21 **Q. At the time you ceased employment at**
 22 **Lawrence, was Barbara still employed there, to**
 23 **your knowledge?**

24 **A. Yes.**

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21

1 **Pat Orsala**

2 **Q.** What was the nature of the corrective

3 action?

4 **A.** I believe it was for conduct that

5 she had overheard in a verbal exchange that was

6 thought to be unacceptable in its content.

7 **Q.** What was the verbal exchange?

8 **A.** I don't recall the details.

9 **Q.** What was the substance of the verbal

10 exchange?

11 **A.** I don't recall.

12 **Q.** Apart from Barbara and Ms. Newmark,

13 were there any employees to your knowledge that

14 ever came to you, or someone else in human

15 resources, with respect to Cathy Newmark?

16 **MR. KEIL:** Objection. I

17 believe you mean Cathy Magone.

18 **MS. NICAJ:** I'm sorry;.

19 Cathy Magone.

20 **A.** I believe there were two questions

21 there. I don't have any knowledge of anyone at

22 Lawrence going to anyone else in human resources,

23 with a concern about Cathy Magone. I do recall

24 meeting with a social worker who had resigned,

25 and I met with her, as was the practice, for what

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22

1 **Pat Orsala**

2 we called an exit interview.

3 **Q.** And that social worker was, who?

4 **A.** First name was Elizabeth. Last name

5 was, I believe Basil, B-a-s-i-l-e. I may not be

6 spelling that correctly.

7 **Q.** What did Ms. Basil say with respect

8 to Cathy Magone?

9 **A.** Elizabeth expressed concern that

10 with her resignation and exit, and shortly before

11 that, the exit of the supervisor of social work,

12 Denise Galloway, who actually had retired and was

13 relocating to the Carolinas after many years with

14 Lawrence, Elizabeth as I recall, felt that Denise

15 Galloway had been a mentor to her and that the

16 loss to Lawrence Hospital of Ms. Galloway was

17 going to be substantial because of her years of

18 experience and her history, et cetera. And

19 Elizabeth told me that Denise's decision to

20 retire was, in part -- was part of the reason

21 that Elizabeth had decided to resign. And I

22 can't recall if Elizabeth was -- had another job

23 to go to at that point or if her plan was to

24 resign and stay at home for a while.

25 In any case, the only discussion

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23

1 **Pat Orsala**

2 specific to Cathy Magone that I had with

3 Elizabeth was during this same conversation,

4 where Elizabeth shared that she, Elizabeth, felt

5 that the staffing complement in the social work

6 department needed to be increased. And she

7 referenced the fact that Cathy Magone was aware

8 of this, and Elizabeth expressed her own concern

9 that there didn't appear to be any additional

10 social work positions approved.

11 **Q.** Did Ms. Basil say anything, as well,

12 with respect to Cathy Magone, apart from what you

13 have already testified to?

14 **A.** No.

15 **Q.** Did you ever communicate

16 Ms. Basil's concerns to Cathy Magone?

17 **A.** I believe I did tell Cathy Magone

18 that -- about Elizabeth's concern as to the

19 staffing levels in the social work department.

20 **Q.** And what, if anything, did Ms. Magone

21 say to you?

22 **A.** I believe that when we discussed it,

23 both of us being at the director level and having

24 responsibility for recommendations around

25 staffing in our departments, that Cathy

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24

1 **Pat Orsala**

2 acknowledged that that may be a concern that

3 Elizabeth had. However, we, as leaders at

4 Lawrence, had a budget that we had to manage to

5 and positions that were not approved.

6 **Q.** At the time of Elizabeth's exit

7 interview, was Mrs. Newmark employed there?

8 **A.** I don't believe so; I can't say for

9 sure.

10 **Q.** To your knowledge, did Denise

11 Galloway ever communicate with you, or anyone

12 else at HR, concerning Cathy Magone?

13 **A.** Not that I recall.

14 **Q.** Are there any documents you can use

15 to refresh your recollection?

16 **A.** No, not that I know of.

17 **Q.** Did anyone else ever communicate

18 with you concerning Cathy Magone?

19 **A.** Not that I recall.

20 **Q.** Are there any documents that you can

21 use to refresh your recollection?

22 **A.** Not that I know of.

23 **Q.** Did there come a time that Carole

24 Newmark communicated with you concerning Cathy

25 Magone?

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25

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1
10:39:45AM 2 **A. Yes.**

10:39:46AM 3 **Q. When was the first instance?**

10:39:47AM 4 **A. I believe it was late in the month**

10:39:48AM 5 **of August of 2006.**

10:39:49AM 6 **Q. You believe it was because of what?**

10:39:50AM 7 **A. I believe it was late in the month**

10:39:51AM 8 **of August; because in my review of documents that**

10:39:52AM 9 **I have already mentioned earlier, that appears to**

10:39:53AM 10 **be about the time that Carole requested to meet**

10:39:54AM 11 **with me for the first time.**

10:39:55AM 12 **Q. What documents are you referring to?**

10:39:56AM 13 **A. E-mails.**

10:39:57AM 14 **Q. From who, to who?**

10:39:58AM 15 **A. E-mails from Carole to myself,**

10:39:59AM 16 **myself to Carole, Cathy Magone, as well.**

10:40:00AM 17 **Q. Do you know how Ms. Newmark first**

10:40:01AM 18 **communicated her wish to meet with you? Was it**

10:40:02AM 19 **in e-mail form or in person?**

10:40:03AM 20 **A. For our first meeting, Carole did**

10:40:04AM 21 **not ask via e-mail to meet with me. I believe**

10:40:05AM 22 **she either came to my office physically and asked**

10:40:06AM 23 **to meet, and then maybe we set up an appointment**

10:40:07AM 24 **for another time, or called me. But to the best**

10:40:08AM 25 **of my recall, it seems to me I have a sense that**

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Pat Orsaia

10:40:09AM 2 **she dropped by my office and said, I would like**

10:40:10AM 3 **to meet with you. I don't think the meeting took**

10:40:11AM 4 **place immediately. I don't think either or both**

10:40:12AM 5 **of us was available immediately; but soon after**

10:40:13AM 6 **that, we set a time and we met.**

10:40:14AM 7 **Q. When did she approach you in person**

10:40:15AM 8 **and stop by your office to meet with you?**

10:40:16AM 9 **A. I don't recall the exact date.**

10:40:17AM 10 **Q. Were you there when she dropped by**

10:40:18AM 11 **your office to schedule a meeting?**

10:40:19AM 12 **A. I can't say for sure. It's possible**

10:40:20AM 13 **that Carole stopped by -- and it would not be**

10:40:21AM 14 **unusual for any employee to stop by and set an**

10:40:22AM 15 **appointment with me through someone else in my**

10:40:23AM 16 **department, who had access to my schedule; I**

10:40:24AM 17 **can't say for sure. I have a sense that maybe**

10:40:25AM 18 **she dropped by herself; but it was a long time**

10:40:26AM 19 **ago, and I don't have exact recall about it.**

10:40:27AM 20 **Q. Do you recall maintaining any notes**

10:40:28AM 21 **in connection with her wanting to meet with you --**

10:40:29AM 22 **A. No.**

10:40:30AM 23 **Q. -- when she dropped by?**

10:40:31AM 24 **A. No.**

10:40:32AM 25 **Q. Do you recall whether she advised**

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Pat Orsaia

10:40:33AM 2 **you, or someone else, what the nature of the**

10:40:34AM 3 **meeting was going to be?**

10:40:35AM 4 **A. I wasn't aware of the nature of what**

10:40:36AM 5 **she wanted to talk about until we actually met,**

10:40:37AM 6 **the detail of it.**

10:40:38AM 7 **Q. And when did you meet with**

10:40:39AM 8 **Ms. Magone -- when did you meet with Ms. Newmark?**

10:40:40AM 9 **A. Once again, I believe it to be late**

10:40:41AM 10 **in the month of August of 2006.**

10:40:42AM 11 **Q. Who else was present?**

10:40:43AM 12 **A. No one.**

10:40:44AM 13 **Q. You believe this meeting was**

10:40:45AM 14 **scheduled in person by Ms. Newmark; is that**

10:40:46AM 15 **right?**

10:40:47AM 16 **A. Possibly.**

10:40:48AM 17 **Q. But you're not certain?**

10:40:49AM 18 **A. I'm not certain.**

10:40:50AM 19 **Q. How long was your meeting with**

10:40:51AM 20 **Ms. Newmark?**

10:40:52AM 21 **A. Our initial meeting was probably,**

10:40:53AM 22 **approximately, fifteen to twenty minutes.**

10:40:54AM 23 **Q. Did you take any notes?**

10:40:55AM 24 **A. I did not.**

10:40:56AM 25 **Q. Is there a reason why not?**

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Pat Orsaia

10:40:57AM 2 **A. No particular reason.**

10:40:58AM 3 **Q. At that point, you were the director**

10:40:59AM 4 **of HR; right?**

10:41:00AM 5 **A. Correct.**

10:41:01AM 6 **Q. At this meeting, what, in words or**

10:41:02AM 7 **substance, did Ms. Newmark say?**

10:41:03AM 8 **A. At this meeting, Carole shared with**

10:41:04AM 9 **me that she had met with Cathy Magone, and she**

10:41:05AM 10 **had been told by Cathy that another social**

10:41:06AM 11 **worker, Nicole, had been selected to work on a**

10:41:07AM 12 **particular project. Carole told me that she was**

10:41:08AM 13 **disappointed that Nicole had been assigned to**

10:41:09AM 14 **this project because it was an area that she,**

10:41:10AM 15 **Carole, had an interest in; namely, palliative**

10:41:11AM 16 **care area.**

10:41:12AM 17 **Carole presented to me in that**

10:41:13AM 18 **initial meeting as being disappointed, as being**

10:41:14AM 19 **angry, and as having a concern about Nicole's**

10:41:15AM 20 **selection for the project.**

10:41:16AM 21 **Q. Did Ms. Newmark indicate, herself,**

10:41:17AM 22 **that Ms. Magone had not selected her for that**

10:41:18AM 23 **project because Nicole was younger?**

10:41:19AM 24 **A. At some point during the conversation,**

10:41:20AM 25 **after we had spoken about the fact that Carole**

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Pat Orsaia

had been assigned to a different project -- which was, I believe, in the area of behavioral health or mental health, and Carole reminded me because I had not -- I was not aware of her résumé or experience; but she reminded me at that time that she had come most recently to Lawrence from employment in the mental health area. And Carole indicated to me that she had been assigned to a mental health project at Lawrence by Cathy Magone, but that Nicole had been assigned to the palliative-care project. I think that we had this discussion in the context of Carole trying to explain to me why, or speculating with me about reasons why she had not been assigned to the palliative-care project.

Q. Are you done with your response?

A. No.

Q. Go ahead.

A. I believe your question was, did Carole share with me that she had a concern about Cathy making a comment that involved the use of the word "young." And Carole did share that concern with me at that meeting.

MS. NICAJ: I'm going to

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Pat Orsaia

strike that portion of the response that was not responsive to my original question.

Q. And from there, I'm going to ask you: What, in words or substance, did Ms. Newmark say to you with respect to Ms. Magone's use of the word "young" or "younger"?

A. Ms. Newmark told me, at our initial meeting, that she -- that Cathy Magone had used the word "young" in reference to Nicole during their meeting. And this was the meeting where Carole was told by Cathy Magone that Nicole had been assigned to the palliative-care project.

Q. Did Ms. Newmark indicate, in words or substance, that Ms. Magone had advised her that one of the reasons she was selecting Ms. Serra for that palliative-care project was because she was young or younger?

A. Carole told me that was her perception of Cathy Magone's comment.

Q. Did she say that that's what Ms. Magone said to her?

A. What Carole said to me was that -- she asked me -- she told me what her recall was

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Pat Orsaia

of Cathy's comment, and then she asked me if that was ageism.

Q. During the course of this meeting, did you, when Ms. Newmark mentioned the young, and "younger," and "ageism," did you ever write this down?

A. I did not.

Q. Why?

A. I asked Carole to clarify for me what she thought this meant. I asked her to clarify what ageism was. I have already testified, I did not write it down.

Q. Why didn't you?

A. I didn't feel it was necessary.

Q. Why not?

A. In my role I have conversations with team members all day long in my office and at other locations around the hospital. They will oftentimes share a concern. I don't write notes or ask them to write a statement about everything they talk to me about.

Q. Is there a discrimination policy at Lawrence that was present when you were HR director?

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Pat Orsaia

A. Yes.

Q. What is it?

A. What is what?

Q. What was the discrimination policy?

A. The discrimination policy is a standard policy that you would find in almost every organization that basically states that Lawrence Hospital Center does not discriminate in its employment practices.

Q. Does it provide for what the procedure is if an employee believes they have been discriminated against?

A. The policy encourages any team member or employee, who feels they're being discriminated against in employment practices, to bring their concern forward.

Q. To whom?

A. To their manager, to human resources, to a senior leader in the organization.

Q. Is there a policy with respect to what is done from that point on, what the procedure is?

A. I don't believe there is a specific procedure spelled out in the policy. The

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Pat Orsaia

1 expectations and, I think, the intent of the
 2 policy is that the person be heard and their
 3 concern be addressed.
 4
 5 Q. There is nothing that says that
 6 these concerns should be reduced to writing?
 7 A. Not that I'm aware of.
 8 Q. You never, yourself, put anything in
 9 writing concerning Ms. Newmark's complaints about
 10 Cathy Magone; is that right?
 11 A. That's right.
 12 Can I ask to revisit that question?
 13 Q. You can.
 14 A. In terms of having put anything in
 15 writing about Ms. Newmark's concerns to Cathy
 16 Magone, I believe there was at least one e-mail.
 17 Q. Not to Cathy Magone.
 18 Did you ever put anything in writing
 19 relating to what Ms. Newmark said to you,
 20 relating to Cathy Magone?
 21 A. Other than the e-mails I was about
 22 to mention, no.
 23 Q. When you say "the e-mails," in what
 24 e-mails did you reference what Ms. Newmark said?
 25 MR. KEIL: I object as to
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Pat Orsaia

1 Isn't that right?
 2 A. Ms. Newmark wrote to me that she
 3 still -- that the concern after I telephoned her
 4 and gave her Cathy's initial clarification of the
 5 comment --
 6 Q. Initial -- what comment are you
 7 referring to?
 8 A. When Carole first met with me.
 9 Q. Right.
 10 A. She voiced a concern that Cathy
 11 Magone had used the word "young" --
 12 Q. Right.
 13 A. -- as part of her explanation about
 14 the project assignment, and Carole referenced
 15 that to me as ageism.
 16 Q. Well, you testified earlier that
 17 Ms. Newmark had, in fact, said that Ms. Magone
 18 had selected Nicole Serra because she was young;
 19 isn't that right?
 20 A. No.
 21 Q. That is not what you said?
 22 A. No.
 23 Q. What did you say with respect to
 24 what Ms. Newmark said to you at that time?
 25 COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1 form.
 2 Q. Did you -- in the e-mails you're
 3 referencing, did you ever say, this is what
 4 Ms. Newmark said, in those e-mails?
 5 A. I believe there is one e-mail that I
 6 sent to Cathy Magone, where I referenced that I
 7 had provided Cathy's clarification around the
 8 comment to Carole and that Carole remained upset
 9 about it and not accepting of Cathy's explanation.
 10 Q. Did --
 11 A. And I put that in an e-mail to Cathy
 12 Magone.
 13 Q. Did you use the word "young" or
 14 "younger," or anything of that nature?
 15 A. I believe I said, Carole was still
 16 unclear or upset about Cathy's use of the word
 17 "young."
 18 Q. That was in reference to the second
 19 meeting with Ms. Magone? There was a second
 20 meeting where Ms. Newmark was present, as well as
 21 Ms. Magone?
 22 A. That's correct.
 23 Q. Following that meeting, Ms. Newmark
 24 had written to you that she still had concerns;
 25 COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1 A. Could you be more specific in the
 2 question?
 3 Q. What did Ms. Newmark say to you when
 4 she first communicated her concern about Cathy
 5 Magone's reference to "young" and Nicole Serra?
 6 A. Ms. Newmark told me that in her
 7 explanation of why Nicole was selected for the
 8 palliative-care project, that Cathy Magone had
 9 used the word "young" in reference to Nicole.
 10 Q. Did she say how Ms. Magone had used
 11 the word "young"?
 12 A. I believe Carole said it was
 13 something to the effect of, Cathy told her Nicole
 14 was young and eager to learn, or could use the
 15 experience, or something like that. It was
 16 really the use of the word "young" that Carole
 17 was focused on.
 18 Q. As you sit here today, do you recall
 19 what Ms. Newmark said in reference to the word
 20 "young"?
 21 A. Just what I have just stated.
 22 Q. Apart from that, anything else you
 23 recall she said to you at that time?
 24 A. In reference to the use of the word
 25 COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**

10:56:27AM 2 **"young"?**

10:56:37AM 3 **Q. Yes.**

10:56:47AM 4 **A. Only that she, Carole, questioned**

10:56:57AM 5 **me. Something like, isn't that ageism, is the**

10:57:07AM 6 **way she put it to me.**

10:57:17AM 7 **Q. What response, if any, did you have**

10:57:27AM 8 **for her?**

10:57:37AM 9 **A. I actually asked her to clarify what**

10:57:47AM 10 **she meant by "ageism."**

10:57:57AM 11 **Q. Why?**

10:58:07AM 12 **A. Because it wasn't a term I was**

10:58:17AM 13 **familiar with.**

10:58:27AM 14 **Q. And what was her response?**

10:58:37AM 15 **You were not familiar with the word**

10:58:47AM 16 **"ageism"?**

10:58:57AM 17 **A. Correct.**

10:59:07AM 18 **Q. What was her response?**

10:59:17AM 19 **A. Her response was that her perception**

10:59:27AM 20 **was that Cathy was telling her that Nicole had**

10:59:37AM 21 **been selected for the palliative-care project**

10:59:47AM 22 **because she was younger in age than Carole.**

10:59:57AM 23 **Q. As the HR director at that time, you**

10:59:67AM 24 **didn't know what "ageism" meant?**

10:59:77AM 25 **A. I thought it was important for**

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1 **Pat Orsaia**

10:59:12AM 2 **Carole to clarify.**

10:59:22AM 3 **Q. I'm asking, at the time when you**

10:59:32AM 4 **asked her what "ageism" meant, you didn't know**

10:59:42AM 5 **what that word meant?**

10:59:52AM 6 **A. I was not familiar with the use of**

10:59:62AM 7 **the word "ageism" as a term that could be used**

10:59:72AM 8 **interchangeably with age discrimination, no.**

10:59:82AM 9 **Q. Did you ever -- did you look up the**

10:59:92AM 10 **definition?**

10:59:02AM 11 **A. No. I asked Carole to clarify for**

10:59:12AM 12 **me what she meant by the term "ageism" in the**

10:59:22AM 13 **context that she was presenting it to me.**

10:59:32AM 14 **Q. What did she say to you?**

10:59:42AM 15 **A. I believe I just stated what she**

10:59:52AM 16 **said to me.**

10:59:62AM 17 **Q. What did she say?**

10:59:72AM 18 **A. She said what she meant by "ageism"**

10:59:82AM 19 **is that her perception is that Cathy's use of the**

10:59:92AM 20 **word "young" in the explanation as to why Nicole**

10:59:02AM 21 **was selected for the palliative-care project, was**

10:59:12AM 22 **a reference to the fact that Nicole was younger**

10:59:22AM 23 **than Carole, and that is why she was selected for**

10:59:32AM 24 **the approach.**

10:59:42AM 25 **Q. Didn't she, in fact, say that**

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1 **Pat Orsaia**

10:59:56AM 2 **Ms. Magone told her that the reason she was**

10:59:66AM 3 **hiring Nicole was because she was young?**

10:59:76AM 4 **A. The reason she was hiring Nicole?**

10:59:86AM 5 **Q. The reason that Ms. Serra was being**

10:59:96AM 6 **selected for that care unit was because she was**

10:59:06AM 7 **young?**

10:59:16AM 8 **A. Carole told me that was her**

10:59:26AM 9 **perception, yes.**

10:59:36AM 10 **Q. Did she say that's what Ms. Magone**

10:59:46AM 11 **told her, in words or substance, that the reason**

10:59:56AM 12 **Ms. Serra was being selected over Ms. Newmark was**

10:59:66AM 13 **because Ms. Serra was young?**

10:59:76AM 14 **A. Carole said that Cathy used the word**

10:59:86AM 15 **"young" as part of her explanation.**

10:59:96AM 16 **MS. NICAJ: I'm going to**

10:59:06AM 17 **move to strike as not responsive.**

10:59:16AM 18 **Read back the question.**

10:59:26AM 19 **(Question read).**

10:59:36AM 20 **MR. KEIL: Do you understand**

10:59:46AM 21 **the distinction that Ms. Nicaj is making**

10:59:56AM 22 **in her questions?**

10:59:66AM 23 **THE WITNESS: No.**

10:59:76AM 24 **MR. KEIL: Perhaps, approach**

10:59:86AM 25 **it differently.**

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1 **Pat Orsaia**

10:59:41AM 2 **MS. NICAJ: Well, I gave her**

10:59:51AM 3 **instructions. I think she understands**

10:59:61AM 4 **perfectly, but I will be happy to rephrase**

10:59:71AM 5 **the question.**

10:59:81AM 6 **Q. Did Ms. Newmark tell you that**

10:59:91AM 7 **Ms. Magone told her the reason she was selecting**

10:59:01AM 8 **Ms. Nicole Serra for that care unit, was because**

10:59:11AM 9 **Ms. Serra was young?**

10:59:21AM 10 **A. Carole told me that that's what she**

10:59:31AM 11 **thought Cathy meant by her comments, yes.**

10:59:41AM 12 **MS. NICAJ: Move to strike as**

10:59:51AM 13 **not responsive.**

10:59:61AM 14 **MR. KEIL: She answered the**

10:59:71AM 15 **question.**

10:59:81AM 16 **MS. NICAJ: No, she has**

10:59:91AM 17 **not.**

10:59:01AM 18 **Q. Did Ms. Newmark say, in words or**

10:59:11AM 19 **substance to you, that Ms. Magone told her the**

10:59:21AM 20 **reason she was selecting Ms. Serra as compared to**

10:59:31AM 21 **Ms. Newmark, was because Ms. Serra was young?**

10:59:41AM 22 **A. I believe I have answered this**

10:59:51AM 23 **question already; but to the best of my recall,**

10:59:61AM 24 **Ms. Newmark told me that she was concerned about**

10:59:71AM 25 **Cathy Magone's use of the word "young" in her**

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1 **Pat Orsaia**

2 explanation about why Nicole was selected for the

3 palliative-care project.

4 MS. NICAJ: I'm going to

5 move to strike as nonresponsive.

6 Can you read the question back.

7 (Question read)

8 A. No.

9 Q. What, if anything else, did she say

10 to you during this initial exchange with

11 Ms. Newmark?

12 A. Ms. Newmark told me in this same

13 conversation that -- I don't remember her exact

14 words, but she indicated to me that she was not

15 entirely comfortable with her role in the

16 department with Cathy Magone as her director and

17 wasn't entirely comfortable -- or maybe had not

18 entirely adjusted to the case-management model of

19 work that was used at Lawrence. And that may

20 have been when Ms. Newmark reminded me that she

21 had come most recently from the mental-health

22 work environment, and it was different in the

23 acute-care environment; there is no question

24 about it. And I believe that Carole, during that

25 initial conversation, even said to me that she

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1 **Pat Orsaia**

2 wasn't sure if her job at Lawrence was the right

3 one for her at that point. And I believe she

4 said something like, maybe it's too soon to tell;

5 or, you know, I'm early in my tenure. Whatever

6 it was.

7 Q. Did you write any of this down?

8 A. No.

9 Q. Okay. Did you communicate that with

10 anyone?

11 A. No.

12 Q. Did she say anything else to you?

13 And when you say you believe, and

14 you believe, what is the basis of your belief?

15 Because with all due respect, I don't care about

16 your belief; I'm interested in your memory. So,

17 what is the basis of your belief?

18 A. When I say "I believe," what I'm

19 providing is my best recall of what was shared in

20 that conversation.

21 Q. So, it's more than your belief; it's

22 your actual recollection? Is that what you're

23 saying?

24 A. Yes.

25 Q. And what, if anything, did you tell

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1 **Pat Orsaia**

2 her in response?

3 A. In response to everything that

4 Carole had shared with me in that initial

5 conversation, I suggested to her that it was

6 important that we clarify -- address her concern

7 and clarify what Cathy had said and what the

8 intent of her comments were.

9 And I told Ms. Newmark that I

10 understood her concern; that we should definitely

11 follow up on it. And I offered her a couple of

12 optional ways to do that.

13 Q. What were those?

14 A. I offered her the option of -- if

15 she was comfortable doing so, I suggested to her

16 that a first option would be for Ms. Newmark to

17 schedule some private time with Cathy Magone and

18 ask for clarification, and let her know what her

19 perception was of their discussion and how she

20 was feeling about the assignment of the projects.

21 I offered her another option of the

22 three of us meeting - Cathy Magone, Ms. Newmark

23 and myself - for a similar discussion.

24 And I offered her a third option of

25 my taking her concern to Cathy Magone separately,

COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**

2 seeking the clarification that she was asking and

3 coming back to her with a response.

4 Those were the options.

5 Q. Did you say anything during this

6 interchange with Ms. Newmark?

7 A. I may have. After presenting the

8 options, I may have asked Carole if she wanted to

9 think about the options and let me know at some

10 later time how she wanted to proceed; or we may

11 have determined it right there, because the

12 option that she chose was for me to contact Cathy

13 Magone, separately, seek the clarification to

14 address her concerns and come back to her with a

15 response.

16 And that's what we actually did.

17 That's what I actually did.

18 Q. Do you recall anything else that was

19 said by you or Ms. Newmark at this meeting?

20 A. No.

21 Q. How long did this meeting last?

22 A. To the best of my recollection,

23 fifteen to twenty minutes.

24 Q. You indicated that she took the

25 third option of you speaking to Ms. Magone,

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 separately?
 3 **A. Yes.**
 4 **Q. Did she communicate the third option**
 5 **to you at that meeting or at some other point?**
 6 **A. Well, I have already stated that I**
 7 **don't recall exactly if she said to me at that**
 8 **point, I'm not comfortable meeting with Cathy; I**
 9 **would prefer that you go back and get the**
 10 **clarification, or whether she called me sometime**
 11 **shortly thereafter and suggested that I contact**
 12 **Cathy, separately.**
 13 **Q. Did you do that, communicate with**
 14 **Ms. Magone?**
 15 **A. I did.**
 16 **Q. How long after your meeting with**
 17 **Ms. Newmark?**
 18 **A. I don't recall exactly. What I do**
 19 **recall is, being the time of year that all this**
 20 **was happening, it is possible that Cathy Magone**
 21 **may have been actually on vacation at the time**
 22 **that Carole saw me initially about her concerns**
 23 **or had been going on vacation.**
 24 **I know in this time frame, over the**
 25 **six-week period or so from the end of August**
 COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 **meet with her and go into detail about it.**
 3 **Q. Did you tell her, Ms. Magone, what**
 4 **those concerns were?**
 5 **A. I don't recall if we spoke in detail**
 6 **on the phone. I don't believe so. I believe**
 7 **that we spoke in person.**
 8 **Q. Did you discuss anything on the**
 9 **telephone concerning Ms. Newmark, expressing what**
 10 **she had related to you about Nicole Serra's**
 11 **appointment to the position?**
 12 **A. I don't recall. It's possible that**
 13 **I did.**
 14 **Q. I'm going to direct your attention**
 15 **to what has been marked as Plaintiff's Exhibit 4,**
 16 **which was previously marked at Ms. Magone's**
 17 **deposition.**
 18 **Directing your attention to**
 19 **Plaintiff's Exhibit 4, have you seen that?**
 20 **A. Yes.**
 21 **Q. What is that?**
 22 **A. This is a printout from our e-mail**
 23 **system, Microsoft Outlook, used at Lawrence**
 24 **Hospital Center. And it tells me that -- it's**
 25 **the e-mail system, telling me that a meeting I**
 COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 **to -- or four-week period from the end of August**
 3 **to the end of September, that I believe I had a**
 4 **full week planned vacation.**
 5 **I believe that Cathy Magone was out**
 6 **for some period of time, and I believe that**
 7 **Carole was out for some period of time. So, I**
 8 **don't remember exactly. We may have had to delay**
 9 **my initial conversation with Cathy Magone because**
 10 **of availability.**
 11 **Q. Did you communicate with Ms. Magone**
 12 **what the intent of your meeting with her was**
 13 **going to be, separate and apart from the fact**
 14 **that you wanted to meet with her to discuss these**
 15 **concerns? Did you tell her what they were going**
 16 **to be about?**
 17 **A. Yes.**
 18 **Q. When? When did you first do so?**
 19 **A. I don't recall the exact date.**
 20 **Q. How was this -- by e-mail, or**
 21 **telephone, or something else?**
 22 **A. My best recollection is that I**
 23 **contacted Cathy by telephone, first, to tell her**
 24 **that I had met with Carole and that Carole had**
 25 **voiced some concerns and that I would like to**
 COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 **had proposed in this case to Cathy Magone, was**
 3 **accepted into her calendar.**
 4 **Q. Where is your e-mail? Did you**
 5 **e-mail her asking for a meeting?**
 6 **A. Well, this would have been in**
 7 **response to my e-mailing her -- not e-mailing so**
 8 **much as proposing a meeting, using the**
 9 **calendar aspect of Microsoft Outlook.**
 10 **Q. Do you know where that is located?**
 11 **In other words, I don't have a copy of your**
 12 **invitation to Ms. Magone. What I'm asking you**
 13 **for is, is there a reason why it's no longer in**
 14 **existence, to your knowledge?**
 15 **A. Well, there wouldn't be a hard copy**
 16 **of that meeting proposal. It's done through the**
 17 **system.**
 18 **I'm not sure if you're familiar with**
 19 **calendar and Outlook.**
 20 **Q. I am, but is there a printing**
 21 **function?**
 22 **A. There is a printing function to**
 23 **print out the calendar.**
 24 **Q. Right. So, when you sent her the**
 25 **invitation, there would have been a printing**
 COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1 function to print it out, right?

2 **A. I would not have a reason to print**

3 **out the invitation.**

4 **Q. Did you spell out what those -- what**

5 **Ms. Newmark's concerns were to Ms. Magone?**

6 **A. It appears as if in this -- in the**

7 **subject line of the meeting proposal, I typed in**

8 **Carole Newmark's concerns, because that's what**

9 **would come back as the subject where it says,**

10 **"Accepted."**

11 **Q. When you communicated with**

12 **Ms. Magone by telephone, was this before or after**

13 **August 21, 2006?**

14 **A. The date August 21, 2006, on this**

15 **document to me, represents the date and time when**

16 **Cathy Magone accepted, via the Outlook system, my**

17 **meeting proposal.**

18 **Q. When you communicated with**

19 **Ms. Magone via telephone, was this before or**

20 **after August 21, 2006?**

21 **A. I'm not sure. It could have been**

22 **the same day.**

23 **Q. Is it fair to say that Ms. Newmark**

24 **had communicated to you, on or before August 21,**

25

COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1 2006, about her concerns relating to Cathy Magone?

2 **A. Yes.**

3 **Q. Do you know when, in relation to**

4 **August 21, 2006, Ms. Newmark had met with you to**

5 **discuss these concerns?**

6 **A. I don't know the exact date.**

7 **Q. Would that be in your calendar, too?**

8 **A. Possibly.**

9 **Q. When did you meet with Ms. Magone?**

10 **A. I don't know the exact date. I can**

11 **only assume from this that it was after August**

12 **21st.**

13 **Q. How long was your meeting with**

14 **Ms. Magone?**

15 **A. To the best of my recollection,**

16 **approximately, fifteen minutes.**

17 **Q. Did you reduce anything she said to**

18 **you or you said to her at this meeting, in**

19 **writing?**

20 **A. No.**

21 **Q. Did you take any notes?**

22 **A. No.**

23 **Q. Was there anyone else present?**

24 **A. No.**

25

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1 **Q. Who spoke first at this meeting?**

2 **A. Who spoke first at the meeting? I'm**

3 **not sure what you mean. Did we greet each other?**

4 **Did I say hello first? Did she say hello first?**

5 **I'm not sure what you mean.**

6 **Q. Who spoke first?**

7 **A. I don't recall.**

8 **Q. What did -- withdrawn.**

9 **What, in words or substance, did you**

10 **say at this meeting?**

11 **A. At my meeting with Cathy Magone, I**

12 **relayed to her the concerns that Carole Newmark**

13 **had shared with me.**

14 **Q. What did you say to Ms. Magone?**

15 **A. I told Cathy Magone that Carole had**

16 **asked to see me, that she was upset about the**

17 **assignment of the project to Nicole, and that her**

18 **perception was that that decision to assign**

19 **Nicole to the project may have something to do**

20 **with Nicole's age or Carole's age.**

21 **I then asked Cathy Magone if she had**

22 **used the word "young" in her discussion with**

23 **Carole. And I explained to Cathy that Carole**

24 **seemed to be focused on her use of the word**

25

COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1 **"young," and I asked her if she used the word.**

2 **Q. And was there anything else you said**

3 **to her at this meeting?**

4 **A. Yes. We -- Cathy answered my**

5 **question.**

6 **Q. What did she say?**

7 **A. She said that -- she thought for a**

8 **minute, and she said that, as she recalled, she**

9 **had referenced the fact that Nicole was younger**

10 **in her career and eager to learn. And Cathy told**

11 **me that she thought that her use of the word**

12 **"young" had been taken out of context by Carole.**

13 **Q. Did she say anything else to you?**

14 **A. She expressed her surprise. She**

15 **said that -- she talked to me about the decision**

16 **to assign Nicole to the palliative-care project.**

17 **She told me that she had made the decision based**

18 **on input from others - specifically, Roseanne**

19 **O'Hare, vice-president of patient-care services,**

20 **and also feedback from Maura DelBene, who was the**

21 **registered nurse assigned to the palliative-care**

22 **program. And that the feedback from both of them**

23 **was that they were looking for Nicole to be**

24 **assigned to the project.**

25

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1
2 Q. Whose decision was it?

3 A. It was Cathy Magone's decision, as
4 far as I know.

5 Q. Anything else that she said to you
6 at this meeting --

7 MS. NICAJ: Withdrawn.

8 Q. Was there anything else that Cathy
9 Magone said to you at this meeting?

10 A. Yes.

11 Q. What?

12 A. She explained to me that Carole had
13 been previously assigned to another project,
14 based on Carole's experience in that area, that
15 was a mental-health project. And Cathy shared
16 with me at that time that Carole had been
17 assigned to the mental-health project and had not
18 begun to do whatever work was involved with that
19 project.

20 Q. Did she tell you when she had been
21 assigned to do this project?

22 A. Not at that meeting, I don't believe
23 she did. It was prior to the assignment of the
24 palliative-care project to Nicole.

25 Q. Do you know when that project was
COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1
2 due?

3 A. No, I don't.

4 Q. Do you know what Ms. Newmark had to
5 do with respect to the project?

6 A. No.

7 Q. Did you ask her? Did you ask
8 Ms. Magone?

9 A. No.

10 Q. In connection with your duties and
11 responsibilities as director of HR, did you see
12 any communications with respect to Ms. Newmark's
13 failure to do something concerning that mental-
14 health project, prior to your meeting with
15 Ms. Magone?

16 A. No.

17 Q. What else did Ms. Magone say to you
18 during this meeting?

19 A. She indicated that they thought it
20 was important that her comment and use of the
21 word "young" be clarified to Carole and her
22 concerns be addressed.

23 Q. Whose concerns?

24 A. Ms. Newmark's.

25 Q. What, if anything, did you say to
COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1
2 Ms. Magone?

3 A. I told her that, as promised to
4 Ms. Newmark, that I was going to take her
5 clarification of the use of the word "young" back
6 to Ms. Newmark as soon as I could.

7 Q. What, if anything, did you do?

8 A. That is what I did.

9 Q. So, when you said you told her, you
10 then communicated what Ms. Magone said to
11 Ms. Newmark?

12 A. Yes.

13 Q. How?

14 A. I believe it was by phone.

15 Q. You believe it was, or was it?

16 A. Yes; to my best recall, it was by
17 telephone initially.

18 Q. And did you, in fact, speak to
19 Ms. Newmark?

20 A. Yes.

21 Q. What, in words or substance, did you
22 say to her?

23 A. I told Ms. Newmark that I had spoken
24 with Cathy Magone. I relayed her concerns of
25 Cathy's use of the word "young" in relation to
COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1
2 the assignment of the project.

3 I told Ms. Newmark that Cathy
4 Magone's clarification was that she thought
5 Carole had taken the word -- her use of the word
6 "young" out of context. And what she, in fact,
7 remembered saying, and what the tenor of her
8 statement was, was that Nicole was younger in her
9 career, and this was a good learning opportunity
10 for her. She was eager to learn, et cetera.

11 Q. What did Ms. Newmark say to you?

12 A. Ms. Newmark indicated that she
13 didn't find that clarification by Cathy Magone to
14 be acceptable.

15 Q. Did she tell you why?

16 A. Ms. Newmark disagreed with what
17 Cathy stated as to her use of the word "young."

18 Q. What did she say with respect to
19 that?

20 A. She said that Cathy Magone did not
21 say that Nicole was younger in her career.

22 Q. What did she say that Ms. Magone
23 said?

24 A. As I recall, Ms. Newmark simply said
25 that Cathy Magone had used the word "young" in
COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**
 2 reference to Nicole.
 3 Q. Apart from -- did she -- withdrawn.
 4 Did she say anything else to you at
 5 this time - Ms. Newmark?
 6 A. Yes. We agreed, during that
 7 telephone conversation, that the three of us
 8 should meet and continue to discuss it.
 9 MS. NICAJ: Can you mark
 10 this.
 11 (Whereupon, e-mail exchange between
 12 Pat Orsaia and Carole Newmark, marked as
 13 Plaintiff's Exhibit Number 24, for
 14 identification.)
 15 Q. I'm going to show you what is marked
 16 as Plaintiff's Exhibit 24, for identification.
 17 (Handing)
 18 Do you recognize Exhibit 24?
 19 A. I recognize it as an e-mail exchange
 20 between Carole Newmark and myself.
 21 Q. Was this the e-mail -- if you can
 22 remember, was this before or after your
 23 communication with Ms. Newmark to relay to her
 24 what Ms. Magone's position was?
 25 A. This is after.
 COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**
 2 Q. Do you recall, in relation to this,
 3 the date of the various e-mails? Because there
 4 are three different e-mails, with the original
 5 message from Ms. Newmark and what appears to be
 6 your response to that e-mail the same day,
 7 September 12th; then, her response to your
 8 e-mail. Do you see that?
 9 A. Yes.
 10 Q. Do you recall how long prior to
 11 September 12, 2006, you met with Ms. Magone
 12 concerning what Ms. Newmark had told you?
 13 A. No, I don't know the exact date that
 14 I met with Cathy Magone prior to this e-mail.
 15 Q. Did you ever reduce what Ms. Magone
 16 told you to writing, whether it was on the date
 17 of the meeting with her or sometime after?
 18 A. Not that I recall.
 19 Q. Did you ever send anything to
 20 Ms. Newmark in writing as to what Ms. Magone told
 21 you?
 22 A. Not that I recall.
 23 Q. Did there come a time that there
 24 was, in fact, this meeting between the three of
 25 you - you, Ms. Newmark and Ms. Magone?

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 A. Yes.
 3 Q. Prior to the meeting, did you meet
 4 with Ms. Newmark separately?
 5 A. Not that I recall.
 6 Q. Did you have any communications with
 7 Ms. Magone prior to the meeting, concerning
 8 Ms. Newmark?
 9 A. Yes.
 10 Q. When?
 11 A. I don't recall the exact date.
 12 Q. Did you reduce anything she said to
 13 you or you said to her, in writing?
 14 A. No.
 15 Q. Did your communication with Magone
 16 occur before or after September 12, 2006?
 17 A. I'm sorry. Could you repeat the
 18 question?
 19 Q. Did your communication with
 20 Ms. Magone occur before or after September 12,
 21 2006, concerning Carole Newmark?
 22 MR. KEIL: Could we clarify
 23 which communication?
 24 MS. NICAJ: There was a
 25 meeting between the three women.
 COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**
 2 Q. Prior to that meeting but on or
 3 after September 12th, 2006, did you communicate
 4 with Ms. Magone concerning Carole Newmark?
 5 A. Yes.
 6 Q. So, between the meeting with all
 7 three of you and the e-mail that is marked
 8 Plaintiff's Exhibit 24 -- the e-mails, rather --
 9 you spoke with Ms. Magone concerning Ms. Newmark;
 10 is that right?
 11 A. I just need to take a step back a
 12 little bit.
 13 Q. Sure.
 14 A. The first in this series of e-mails
 15 from Carole to me on September 12th at 11:45
 16 a.m., she says, "This is the follow-up to our
 17 meeting of approximately two weeks ago."
 18 At this point, I believe Ms. Newmark
 19 and I had already had our telephone conversation,
 20 where I provided her with Cathy's response to her
 21 concern.
 22 Q. Right.
 23 A. Then, we had talked about setting up
 24 a meeting with the three of us.
 25 Q. Right.

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1
2 **A. So, in between that and the time the**
3 **three of us met, I must've communicated with**
4 **Cathy to set up the meeting time for the three of**
5 **us to get together.**
6 **Q. Okay --**
7 **A. And I do recall speaking with**
8 **Cathy Magone to let her know that I had spoken to**
9 **Carole after my initial meeting with Cathy**
10 **Magone, provided Carole with Cathy's**
11 **clarification of her use of the word "young" and**
12 **that Carole was not in agreement with it and was**
13 **not yet comfortable with the explanation.**
14 **Q. Did you have this second communication**
15 **with Ms. Magone before or after September 12th?**
16 **A. I'm not certain.**
17 **Q. Did you do so in writing or some**
18 **other manner?**
19 **A. I spoke to her on the phone.**
20 **Q. What did you say to Ms. Magone, in**
21 **words or substance?**
22 **A. I told Cathy that I had contacted**
23 **Carole and that I had given Carole, Cathy**
24 **Magone's explanation of the word "young" and that**
25 **Carole did not find it acceptable; she was not in**

COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1
2 **agreement with it. And that Carole and I both**
3 **thought it would be helpful for the three of us**
4 **to meet and continue to discuss it.**
5 **Q. What, if anything, did Ms. Magone**
6 **say to you?**
7 **A. She agreed.**
8 **Q. Was there anything else said?**
9 **A. Not that I recall.**
10 **Q. During this interchange --**
11 **A. Not that I recall. Once again,**
12 **there may have been some discussion about trying**
13 **to set up the meeting because of people's**
14 **availability.**
15 **Q. Between that telephone conversation**
16 **with Ms. Magone, and the actual meeting with**
17 **Ms. Magone and Ms. Newmark, did you have any**
18 **other communications with Ms. Magone relating to**
19 **Ms. Newmark?**
20 **A. To my best recollection, I did;**
21 **because at some point prior to the meeting that**
22 **the three of us had, I had some conversation with**
23 **Cathy Magone about Ms. Newmark's attendance and**
24 **performance concerns on Cathy Magone's part.**
25 **Q. When did you have those? How many**

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1
2 **communications did you have with Ms. Magone**
3 **concerning that?**
4 **A. I believe it was one conversation.**
5 **Q. When?**
6 **A. I don't know the exact date.**
7 **Q. After September 12th?**
8 **A. I don't know exactly. I believe it**
9 **was after September 12th.**
10 **Q. Was this in writing?**
11 **A. No.**
12 **Q. Did you reduce anything she said to**
13 **you in writing?**
14 **A. No.**
15 **Q. Did you ask her for anything in**
16 **writing?**
17 **A. No.**
18 **Q. So, between your -- after you spoke**
19 **to Ms. Magone about Ms. Newmark telling you that**
20 **she didn't find Ms. Magone's statements --**
21 **withdrawn.**
22 **She disagreed with Ms. Magone's**
23 **statements, after that statement that Ms. Newmark**
24 **made to you and the actual meeting between the**
25 **three of you, at some point Ms. Magone spoke to**

COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1
2 **you about Ms. Newmark's performance?**
3 **A. Yes.**
4 **Q. Prior to that time, had she**
5 **communicated with you about Ms. Newmark's**
6 **performance?**
7 **A. Prior to that, when I had spoken to**
8 **Cathy about the project assignment and Cathy had**
9 **explained to me that she had gotten feedback from**
10 **the two sources I have already mentioned -**
11 **Roseanne O'Hare and Maura DelBene - about who**
12 **they would prefer to have assigned to the**
13 **project, at that time, Cathy indicated to me that**
14 **part of their feedback in relation to Carole was**
15 **not positive. And that was part of the feedback**
16 **that they gave to Cathy about their preference to**
17 **have Nicole assigned to the project, instead of**
18 **Carole.**
19 **Q. Apart from that, was that**
20 **communication that you had with Ms. Magone --**
21 **that was in reference to when Ms. Newmark had**
22 **expressed her concern to you about Ms. Magone**
23 **referring to the reasons Ms. Nicole Serra was**
24 **selected instead of her; is that right?**
25 **A. Yes.**

COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**

2 **Q.** So, once you communicated what

3 Ms. Newmark said to you, Ms. Magone then

4 mentioned the reason for the selection of

5 Ms. Serra; is that right?

6 **A.** In my telephone conversation after

7 my first meeting with Ms. Newmark, when I went

8 back to Cathy Magone by telephone to seek

9 clarification about Carole's concern over her use

10 of the word "young," Cathy Magone was talking to

11 me about her decision process of assigning Nicole

12 to the palliative-care project. And after she

13 clarified for me her use of the word "young," she

14 was talking to me about her decision process, and

15 she talked about Carole having already been

16 assigned to a project.

17 Now, this new project for palliative

18 care had come about, and it was her decision she

19 had selected Nicole to be assigned to that

20 project. She had gotten two feedbacks, from

21 Roseanne O'Hare and Maura DelBene, who were both

22 closely involved with the project, and that they

23 had voiced some concern to Cathy about Carole's

24 performance in her role to date. And they

25 basically had said to Cathy, our preference would

COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**

2 be to have Nicole assigned to the palliative-care

3 project. Cathy shared that with me.

4 **Q.** Did Maura DelBene supervise

5 Ms. Newmark?

6 **A.** She did not.

7 **Q.** Did she have any role in the social

8 work department?

9 **A.** She would, in the course of her job

10 duties, need to relate to people in the social

11 work and case management department, as they

12 might be -- as they might have some

13 responsibilities to a case she was -- she might

14 already be involved in.

15 **Q.** Did you receive any communications

16 from her concerning Ms. Newmark?

17 **A.** From Ms. DelBene?

18 **Q.** Yes.

19 **A.** No.

20 **Q.** What about Ms. O'Hare? Did you

21 receive any communications from her concerning

22 Carole Newmark?

23 **A.** No.

24 **Q.** Prior to that initial communication

25 with Ms. Magone, which was for the purposes of

COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**

2 discussing those age-related comments that

3 Ms. Newmark had expressed concern about, had

4 Ms. Magone ever come to you, concerning

5 Ms. Newmark?

6 **A.** Not that I recall.

7 **Q.** Getting back to the second time

8 where you say there was -- withdrawn.

9 You indicated that Ms. Magone

10 expressed to you some concern about Ms. Newmark's

11 performance and her unplanned absences at some

12 point.

13 **A.** Yes. At some point, Cathy brought

14 that to my attention.

15 **Q.** That was after September 12th, 2006;

16 is that right?

17 **A.** I don't know.

18 **Q.** Was that after your communication

19 with her, your initial communication with her

20 concerning Ms. Newmark's expression of concern?

21 **A.** I think I first became aware of

22 concerns with Ms. Newmark's attendance pattern

23 after Ms. Newmark told me that she had

24 requested -- or not requested; she had advised

25 Cathy Magone that she needed some time off for

COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**

2 some medical testing. And I think at that point,

3 Ms. Newmark told me that Cathy had spoken to her

4 in regard to this request, in regards to the fact

5 that she had already had some unplanned time off,

6 and that I believe it had been communicated --

7 according to Ms. Newmark -- to her, by Cathy

8 Magone at that point, that the time off she was

9 requesting for the medical testing, was not

10 approved.

11 And that at some point -- I'm not

12 sure if in this same conversation -- Carole told

13 me then Cathy had reconsidered and it was

14 approved, or if that happened later on.

15 **Q.** Do you know when that occurred?

16 **A.** No, I don't.

17 **Q.** Was it around the time of September

18 12, 2006?

19 **A.** I don't know exactly.

20 **Q.** Do you know whether it was before or

21 after -- withdrawn.

22 Getting back to your communication

23 with Ms. Magone, what did she say to you were her

24 concerns about Ms. Newmark's performance?

25 **A.** Cathy Magone told me that in

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

11:42:38AM 2 **considering her decision to assign Nicole to the**
11:43:02AM 3 **palliative-care project, that she had gotten**
11:43:26AM 4 **feedback from Roseanne --**

11:43:50AM 5 **Q. I don't mean to interrupt you. Was**
11:44:14AM 6 **this the conversation you relayed during your**
11:44:38AM 7 **telephone -- was this the communication wherein**
11:45:02AM 8 **you expressed to Ms. Magone what Ms. Newmark had**
11:45:26AM 9 **told you about the age-related comments, or was**
11:45:50AM 10 **this at some other point?**

11:46:14AM 11 **A. It was during that conversation.**

11:46:38AM 12 **Q. Okay. I'm not going to rehash it,**
11:47:02AM 13 **unless you haven't told me something about that**
11:47:26AM 14 **conversation.**

11:47:50AM 15 **A. I believe I have told you what I**
11:48:14AM 16 **recall about it.**

11:48:38AM 17 **Q. There was a second communication.**
11:49:02AM 18 **You relayed to me that you -- that Ms. Magone**
11:49:26AM 19 **expressed some concern about performance and**
11:49:50AM 20 **unplanned absences on the part of Ms. Newmark**
11:50:14AM 21 **after that. And you said it was sometime between**
11:50:38AM 22 **September 12th, and the meeting with the three of**
11:51:02AM 23 **you - Ms. Newmark, Ms. Magone and yourself?**

11:51:26AM 24 **A. Yes. To the best of my recall, at**
11:51:50AM 25 **the time that Carole and Cathy and I met, the**
COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

11:52:17AM 2 **three of us, I already had some sense of a**
11:52:41AM 3 **concern about attendance and performance prior to**
11:53:05AM 4 **that meeting. I don't know exactly when I became**
11:53:29AM 5 **aware of it.**

11:53:53AM 6 **Q. You had some sense.**
11:54:17AM 7 **Did you meet with Ms. Magone about**
11:54:41AM 8 **this?**

11:55:05AM 9 **A. Well, as I have stated, I believe it**
11:55:29AM 10 **was Carole Newmark, herself, who first brought up**
11:55:53AM 11 **the issue of her attendance pattern with me.**

11:56:17AM 12 **Q. I'm not asking about Carole Newmark.**
11:56:41AM 13 **I'm asking you a specific question relating to**
11:57:05AM 14 **Cathy Magone, okay?**

11:57:29AM 15 **So, going back to my previous**
11:57:53AM 16 **question --**

11:58:17AM 17 **A. I don't know if I met with her or if**
11:58:41AM 18 **we spoke by telephone or -- I don't recall.**

11:59:05AM 19 **Q. Do you recall when the meeting took**
11:59:29AM 20 **place between you, Ms. Newmark, and Ms. Magone?**

11:59:53AM 21 **A. I believe it was September 28th.**

12:00:17AM 22 **Q. Do you recall how long prior to**
12:00:41AM 23 **September 28th, you communicated with Ms. Magone**
12:01:05AM 24 **concerning Ms. Newmark's performance, apart from**
12:01:29AM 25 **that initial exchange that was the result of her**

COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

11:46:38AM 2 **explaining to you why she had not selected**
11:47:02AM 3 **Ms. Newmark?**

11:47:26AM 4 **A. I don't know exactly when that took**
11:47:50AM 5 **place. I do know at some point Cathy Magone, as**
11:48:14AM 6 **department leader, shared with me that she had**
11:48:38AM 7 **performance and attendance concerns with**
11:49:02AM 8 **Ms. Newmark.**

11:49:26AM 9 **We discussed that Ms. Newmark was**
11:49:50AM 10 **still in her probationary period. We talked**
11:50:14AM 11 **about the number of occurrences of unplanned**
11:50:38AM 12 **absences to date. We talked specifically about**
11:51:02AM 13 **the performance concerns. I don't recall exactly**
11:51:26AM 14 **when that was.**

11:51:50AM 15 **Q. Is there any clear-cut rule about**
11:52:14AM 16 **the unplanned absences, the number and so forth?**

11:52:38AM 17 **A. Yes.**

11:53:02AM 18 **Q. What is it?**

11:53:26AM 19 **A. In our policy on attendance, it**
11:53:50AM 20 **states that five or more occurrences -- well,**
11:54:14AM 21 **five -- actually, five occurrences of lateness**
11:54:38AM 22 **and/or unplanned absence, in a rolling,**
11:55:02AM 23 **consecutive twelve-month period, is considered**
11:55:26AM 24 **excessive.**

11:55:50AM 25 **Q. At the time that you communicated**
COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

11:48:22AM 2 **with Ms. Magone, how many had Ms. Newmark had?**

11:48:46AM 3 **A. Four.**

11:49:10AM 4 **Q. Do you know whether the last absence**
11:49:34AM 5 **was, in fact, planned or unplanned?**

11:49:58AM 6 **A. I don't know.**

11:50:22AM 7 **Q. You indicated previously that there**
11:50:46AM 8 **was an issue of a doctor's procedure that**
11:51:10AM 9 **Ms. Newmark had gone to you about because**
11:51:34AM 10 **Ms. Magone had initially denied her request?**

11:51:58AM 11 **A. Yes; there was a medical testing.**

11:52:22AM 12 **Q. Medical testing?**

11:52:46AM 13 **A. Yes.**

11:53:10AM 14 **Q. Do you know what the nature of the**
11:53:34AM 15 **medical testing was?**

11:53:58AM 16 **A. I believe Carole told me it was for**
11:54:22AM 17 **a colonoscopy.**

11:54:46AM 18 **Q. Was that considered planned or**
11:55:10AM 19 **unplanned?**

11:55:34AM 20 **A. I can't really make that**
11:55:58AM 21 **distinction, because she would have needed to**
11:56:22AM 22 **make the request for planned time off through her**
11:56:46AM 23 **department process. That is not something that**
11:57:10AM 24 **would come through human resources.**

11:57:34AM 25 **Q. So, if she made her request and it**

COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1 was granted, it was a planned absence; is that
 2 correct?
 3
 4 **A. Yes; if she made the request in a**
 5 **timely fashion, and it was approved, and it was**
 6 **communicated to her, that would be considered a**
 7 **planned absence, and she would use her paid time**
 8 **off appropriately for it.**
 9 **Q. What do you mean by "timely"?**
 10 **A. Well, depending on what the**
 11 **departmental process was, and I'm not -- I don't**
 12 **know that for every single department at the**
 13 **hospital.**
 14 **Q. So, it could vary from department to**
 15 **department? There is not a unified rule as to**
 16 **how much time you need to advise someone of an**
 17 **absence?**
 18 **A. Most departments had a written**
 19 **process through which you would fill out a form**
 20 **for requested time off. The employee would**
 21 **submit that for the appropriate approval. The**
 22 **manager would -- or supervisor/manager/director,**
 23 **whoever was responsible to consider those**
 24 **requests, would look at the written request,**
 25 **compare that against staffing, compare it against**
 COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1 whatever business-need criteria there might be,
 2 then communicate back to the employee whether or
 3 not the day or days had been approved.
 4 **Q. Prior to the meeting with**
 5 **Ms. Newmark, and Ms. Magone, on September 28th,**
 6 **2006, was there any discussion about terminating**
 7 **Ms. Newmark's employment?**
 8 **A. Prior to the discussion on September**
 9 **28th?**
 10 **Q. Yes.**
 11 **A. No.**
 12 **Q. Did Ms. Magone ever tell you that**
 13 **she was seeking to terminate Ms. Newmark's**
 14 **employment prior to September 28th?**
 15 **A. Ms. Magone told me that there were**
 16 **attendance and performance concerns, that**
 17 **Ms. Newmark was in her probationary period. And**
 18 **she may have said to me, I'm not sure this is**
 19 **going to work out.**
 20 **Q. I'm not asking --**
 21 **MS. NICAJ: Move to strike**
 22 **as non-responsive.**
 23 **Q. I'm not asking you what she may have**
 24 **said to you. I'm asking you what you recall her**
 25 COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1 saying to you.
 2 So, prior to September 28th, 2006,
 3 did Ms. Magone ever advise you, in words or
 4 substance, that she was going to recommend
 5 Ms. Newmark's termination?
 6 **A. She told me that was a possibility,**
 7 **yes.**
 8 **Q. She did, okay.**
 9 When did she tell you it was a
 10 possibility?
 11 **A. I can't say an exact date; I don't**
 12 **recall.**
 13 **Q. Did you reduce it in writing**
 14 **anywhere?**
 15 **A. No.**
 16 **Q. Why not?**
 17 **A. It would not be something that is**
 18 **required, nor was it my practice to do so.**
 19 **Q. You didn't reduce the fact that**
 20 **Ms. Newmark complained to you about ageism in**
 21 **writing; right?**
 22 **A. I have already answered that**
 23 **question.**
 24 **Q. Is that right?**
 25 COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1 **A. I did not reduce it in writing.**
 2 **Q. You didn't reduce the fact that once**
 3 **you explained to Ms. Newmark about Ms. Magone's**
 4 **explanation of her use of the word "young," that**
 5 **she was not satisfied; did you?**
 6 **A. No. I communicated it to the**
 7 **appropriate people that were involved in the**
 8 **discussion then and going forward.**
 9 **Q. Did you ever communicate what was**
 10 **happening to your supervisors?**
 11 **A. I may have; I don't recall.**
 12 **Q. Did you?**
 13 **A. I don't know for sure.**
 14 **Q. Who is your direct supervisor?**
 15 **A. Deborah Gogliettino.**
 16 **Q. And what is her position?**
 17 **A. She was, at that time, vice-**
 18 **president of human resources.**
 19 **Q. Is she still there?**
 20 **A. She is not.**
 21 **Q. Who assumed her position?**
 22 **A. Bob Greco.**
 23 **Q. September 28th, 2006, there was a**
 24 **meeting. Where?**
 25 COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**

2 **A. Yes, there was a meeting.**

3 **Q. Where was it?**

4 **A. In my office.**

5 **Q. And present were Ms. Magone and**

6 **Ms. Newmark; right?**

7 **A. Yes.**

8 **Q. Anyone else?**

9 **A. Just the three of us.**

10 **Q. Did you take any notes at this**

11 **meeting?**

12 **A. No, I did not.**

13 **Q. Incidentally, did you ever take any**

14 **statements down as to what Ms. Magone told you in**

15 **reference to her communication relating to the**

16 **selection of Nicole Serra?**

17 **A. No.**

18 **Q. Did you ever take any statements**

19 **down in connection with what Ms. Newmark told you**

20 **pertaining to Nicole Serra's selection?**

21 **A. No.**

22 **Q. How long was the meeting?**

23 **A. Approximately, twenty to thirty**

24 **minutes.**

25 **Q. Do you recall who spoke first at the**

COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**

2 **meeting?**

3 **A. As I recall, I spoke first at the**

4 **meeting.**

5 **Q. What did you say?**

6 **A. I introduced the meeting by saying**

7 **that -- thanking both of them for coming, and**

8 **saying that we were there to try to address**

9 **Carole's concerns and that we had all agreed that**

10 **that was best done probably in person. That is**

11 **the substance of what I said.**

12 **Q. What happened next?**

13 **A. As I recall, Cathy offered her**

14 **explanation to Carole of her use of the word**

15 **"young."**

16 **Q. What did Ms. Magone say?**

17 **A. She said that she wanted to be clear**

18 **that Nicole's age or Carole's age had nothing to**

19 **do with her decision for the assignment of the**

20 **palliative-care project. She said that she**

21 **thought Carole had taken her use of the word**

22 **"young" out of context. And what she recalled**

23 **saying was that Nicole was younger in her career;**

24 **she was eager to learn; was soaking things up**

25 **like a sponge.**

COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**

2 **She reminded Carole that Carole had**

3 **been assigned to the mental-health project, as it**

4 **was thought to be appropriate to her experience.**

5 **She advised Ms. Newmark that she had**

6 **gotten feedback or input from Roseanne O'Hare and**

7 **Maura DelBene regarding the assignment of a**

8 **social worker to the palliative-care project.**

9 **At some point in the conversation,**

10 **Cathy Magone referenced to Ms. Newmark the fact**

11 **that her attendance pattern had not been**

12 **acceptable to that point. She had concerns about**

13 **it. And she referenced that she had some**

14 **performance concerns, as well.**

15 **Q. Did she say anything else at this**

16 **point? This is Ms. Magone.**

17 **A. When Cathy Magone referenced that**

18 **she had some attendance and performance concerns,**

19 **Ms. Newmark responded by saying that she would**

20 **like to have detail about the performance**

21 **concerns.**

22 **And Cathy Magone responded by**

23 **telling her that that particular discussion, the**

24 **particular discussion we were having was for a**

25 **different purpose, and that she was prepared to**

COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsaia**

2 **provide her with detail, and that would happen**

3 **during her performance evaluation discussion.**

4 **Q. So, you understood that she had not**

5 **had any performance discussion with her until**

6 **that time, based on what Ms. --**

7 **A. No.**

8 **Q. -- what did you understand that to**

9 **be, then?**

10 **A. What I understood it to be was**

11 **Carole, at that point in time, at that meeting,**

12 **wanted to go over the detail of performance**

13 **concerns; and her director telling her that she**

14 **would be sharing the detail with her in another**

15 **forum, which was a performance-evaluation**

16 **discussion.**

17 **Q. Well, you mentioned that Ms. Magone**

18 **was the one who raised the issue of performance;**

19 **right?**

20 **A. She stated that she had attendance**

21 **and performance concerns, yes.**

22 **Q. Isn't it fair to say that**

23 **Ms. Newmark was just responding to what**

24 **Ms. Magone had herself raised, her director, as**

25 **you say?**

COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

11:51:42AM 2 MR. KEIL: Objection. Could

11:59:46AM 3 you rephrase that?

11:59:46AM 4 MS. NICAJ: I'll withdraw

11:59:46AM 5 it.

11:59:46AM 6 Q. You said that she, Ms. Magone,

11:59:46AM 7 didn't want to address these issues with

11:59:46AM 8 Ms. Newmark at this meeting. Yet, Ms. Magone is

12:00:00PM 9 the one who first raised the issue at the

12:00:00PM 10 meeting; isn't that right?

12:00:00PM 11 A. Cathy Magone made the statement that

12:00:00PM 12 she had concerns with Ms. Newmark's attendance

12:00:00PM 13 and performance during this meeting. She said

12:00:00PM 14 that.

12:00:00PM 15 Q. So, when Ms. Newmark asked her about

12:00:00PM 16 that, Ms. Magone said what, then? It wasn't the

12:00:00PM 17 time for that discussion to take place? Isn't

12:00:00PM 18 that right, in substance?

12:00:00PM 19 A. That was -- words to that effect -

12:00:00PM 20 that that discussion wasn't for that particular

12:00:00PM 21 meeting; that she would be happy to provide her

12:00:00PM 22 with the details and any clarification she wanted

12:00:00PM 23 during a performance-evaluation discussion, which

12:00:00PM 24 is normally held between the manager and the team

12:00:00PM 25 member privately. I would not normally be in on

COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

12:01:14PM 2 that discussion.

12:01:14PM 3 Q. Did you ask her why she mentioned

12:01:14PM 4 performance, then, at that meeting - Ms. Magone?

12:01:14PM 5 A. To the best of my recall, she may

12:01:14PM 6 have mentioned it because Carole referenced the

12:01:14PM 7 fact that her probation had been extended. And

12:01:14PM 8 Cathy may have responded to that by saying, yes,

12:01:14PM 9 your probation has been extended, due to my

12:01:14PM 10 concerns with your attendance and performance, or

12:01:14PM 11 words to that effect.

12:01:14PM 12 Q. Okay. Now, what else was said

12:01:14PM 13 during this meeting?

12:01:14PM 14 A. I'm trying to recall if it was at

12:01:14PM 15 this particular meeting, but I do remember at

12:01:14PM 16 some point the three of us having a discussion --

12:01:14PM 17 so, I'm assuming it was at this meeting -- that

12:01:14PM 18 when we were -- when they were talking about

12:01:14PM 19 Cathy's use of the word "young" and she was

12:01:14PM 20 offering her explanation or clarification, that

12:01:14PM 21 at some point, Cathy pointed out to Carole that

12:01:14PM 22 if one looks at the complexion of the department

12:01:14PM 23 of case management and social work department,

12:01:14PM 24 it's obvious that it's made up of women who I

12:01:14PM 25 would call my peers. And Cathy may have even

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Pat Orsaia

12:02:27PM 2 used that phrase, her peers, in terms of age, et

12:02:27PM 3 cetera. I believe the point she was trying to

12:02:27PM 4 make was that -- I believe she was trying to

12:02:27PM 5 point out to Carole that age was not a factor in

12:02:27PM 6 her decision for the program.

12:02:27PM 7 Carole had been hired a short time

12:02:27PM 8 prior to that. So, obviously, in the interview

12:02:27PM 9 process, you know, one can see, just through the

12:02:27PM 10 interview process, who they are hiring. And that

12:02:27PM 11 in fact, if one were to look at the complexion of

12:02:27PM 12 the group overall, the department, there were

12:02:27PM 13 many females that Cathy would consider her

12:02:27PM 14 contemporaries in terms of age. So, I do

12:02:27PM 15 remember comments to that substance. And I

12:02:27PM 16 believe it was at that meeting, to the best of my

12:02:27PM 17 recall.

12:02:27PM 18 Q. Do you know how many people were

12:02:27PM 19 interviewed in connection with the position for

12:02:27PM 20 which Ms. Newmark had been hired?

12:02:27PM 21 A. No.

12:02:27PM 22 Q. Do you recall anything else said

12:02:27PM 23 during this meeting?

12:02:27PM 24 A. No.

12:02:27PM 25 Q. I'm going to direct your attention

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Pat Orsaia

12:06:14PM 2 to what has been identified previously as

12:06:14PM 3 Plaintiff's Exhibit 5, for identification.

12:06:14PM 4 (Handing)

12:06:14PM 5 Do you recognize Plaintiff's 5, for

12:06:14PM 6 identification?

12:06:14PM 7 A. It's an e-mail sent to me by Carole

12:06:14PM 8 Newmark on September 29th.

12:06:14PM 9 Q. And do you recall seeing this e-mail

12:06:14PM 10 prior to today?

12:06:14PM 11 A. Yes.

12:06:14PM 12 Q. Do you recall seeing it on or about

12:06:14PM 13 September 29, 2006?

12:06:14PM 14 A. Yes.

12:06:14PM 15 Q. This e-mail, as you see here,

12:06:14PM 16 purports to relay things that occurred at the

12:06:14PM 17 September 28th meeting; isn't that right?

12:06:14PM 18 A. Yes.

12:06:14PM 19 Q. Is there anything that is not truthful

12:06:14PM 20 that is contained in Plaintiff's Exhibit 5?

12:06:14PM 21 A. Well, in number two, I was not

12:06:14PM 22 present when Cathy and Carole discussed her

12:06:14PM 23 probation being extended; so, I don't know what

12:06:14PM 24 was stated by either of them.

12:06:14PM 25 Q. Okay.

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsala**
 12:07:44PM 2 **A. Also in number two, where Carole**
 12:07:57PM 3 **states "This was a surprise to me, as she has**
 12: 4 **never brought up any work issues until our**
 12:08:10PM 5 **meeting yesterday," I can't say that that is**
 12:08:23PM 6 **true.**
 12:08:36PM 7 **Q. Go ahead.**
 12:08:49PM 8 **A. Once again, her final statement**
 12:09:02PM 9 **under number two that "She should not have to**
 12:09:15PM 10 **wait until my evaluation to hear what the work**
 12:09:28PM 11 **issues are," I don't have firsthand knowledge of**
 12:09:41PM 12 **what communication happened between Ms. Newmark**
 12:09:54PM 13 **and her director about the work issues.**
 12:10:07PM 14 **Number three, where it says, "This**
 12:10:20PM 15 **statement is tantamount to saying that I am old**
 12:10:33PM 16 **and am not able to absorb information as well,"**
 12:10:46PM 17 **I do not recall Cathy Magone saying that during**
 12:10:59PM 18 **our meeting.**
 12:11:12PM 19 **Q. Okay. Apart from, "This statement**
 12:11:25PM 20 **is tantamount to saying that I'm old and are not**
 12:11:38PM 21 **able to absorb information as well," is**
 12:11:51PM 22 **everything else in paragraph three truthful?**
 12:12:04PM 23 **A. The final sentences in three, "Cathy**
 12:12:17PM 24 **does not know what my capabilities are. She has**
 12:12:30PM 25 **not taken the time to learn about who I am and**
 COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsala**
 12:10:43PM 2 **learn exactly what my strengths are," I don't**
 12:10:56PM 3 **know that that is true.**
 12:11:09PM 4 **Q. Okay. So, with respect to**
 12:11:22PM 5 **paragraph three, the first two sentences -- the**
 12:11:35PM 6 **first three sentences are truthful?**
 12:11:48PM 7 **A. Cathy did deny that she said that**
 12:12:01PM 8 **Nicole could handle the job better than Carole**
 12:12:14PM 9 **could.**
 12:12:27PM 10 **MR. KEIL: Is your answer**
 12:12:40PM 11 **finished?**
 12:12:53PM 12 **Q. Are the first three sentences -- are**
 12:13:06PM 13 **the first two sentences in paragraph three**
 12:13:19PM 14 **truthful; yes or no?**
 12:13:32PM 15 **MR. KEIL: Just take them**
 12:13:45PM 16 **one at a time.**
 12:13:58PM 17 **MS. NICAJ: I'll ask the**
 12:14:11PM 18 **questions. If you want to follow up with**
 12:14:24PM 19 **your witness, you can. You're more than**
 12:14:37PM 20 **free to.**
 12:14:50PM 21 **MR. KEIL: I object to the**
 12:15:03PM 22 **form of the question as being compound.**
 12:15:16PM 23 **A. I have already stated that I don't --**
 12:15:29PM 24 **the third statement that says -- this statement,**
 12:15:42PM 25 **the third sentence that, "This statement is**
 COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsala**
 12:15:55PM 2 **tantamount to saying that I'm old and are not**
 12:16:08PM 3 **able to absorb information as well," that is**
 12:16:21PM 4 **Carole's opinion. I'm not in a position to state**
 12:16:34PM 5 **whether or not it's a truth.**
 12:16:47PM 6 **MS. NICAJ: I'm going to**
 12:17:00PM 7 **move to object on the basis it's**
 12:17:13PM 8 **nonresponsive.**
 12:17:26PM 9 **Can you repeat my last question.**
 12:17:39PM 10 **(Question read)**
 12:17:52PM 11 **A. To the best of my recall, the first**
 12:18:05PM 12 **two sentences of Item number three are accurate.**
 12:18:18PM 13 **Q. What else do you recall concerning**
 12:18:31PM 14 **the meeting?**
 12:18:44PM 15 **A. Well, I recall that my impression,**
 12:18:57PM 16 **as I listened to the dialogue between Carole and**
 12:19:10PM 17 **Cathy, was that Carole was fixated on Cathy's use**
 12:19:23PM 18 **of the word "young," that Carole was -- Carole**
 12:19:36PM 19 **remained visibly angry about Nicole's assignment**
 12:19:49PM 20 **to the palliative-care project.**
 12:20:02PM 21 **Q. What do you recall being said at**
 12:20:15PM 22 **this meeting?**
 12:20:28PM 23 **A. Being said by everyone at the**
 12:20:41PM 24 **meeting?**
 12:20:54PM 25 **Q. Yes.**
 COMPU-TRAN SHORTHAND REPORTING

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1 **Pat Orsala**
 12:21:14PM 2 **A. You're asking me to recount the**
 12:21:27PM 3 **entire meeting again?**
 12:21:40PM 4 **Q. Apart from what you have already**
 12:21:53PM 5 **said; this was the sum and substance of what you**
 12:22:06PM 6 **recall about this meeting?**
 12:22:19PM 7 **A. Yes.**
 12:22:32PM 8 **Q. And when -- getting back to**
 12:22:45PM 9 **paragraph three, the second sentence states,**
 12:22:58PM 10 **"She --" referring to Ms. Magone, "-- stated that**
 12:23:11PM 11 **she did say that Nicole was young and could take**
 12:23:24PM 12 **things in like a sponge."**
 12:23:37PM 13 **Do you see that?**
 12:23:50PM 14 **A. Yes.**
 12:24:03PM 15 **Q. That was truthful that Ms. Magone**
 12:24:16PM 16 **said at that meeting -- that she did say Nicole**
 12:24:29PM 17 **was young and could take things in like a sponge?**
 12:24:42PM 18 **A. Cathy did say she had used the word**
 12:24:55PM 19 **"young" in her initial discussion with Carole.**
 12:25:08PM 20 **And I remember her saying that part of what she**
 12:25:21PM 21 **meant was that Nicole was eager to learn and**
 12:25:34PM 22 **could take things in like a sponge.**
 12:25:47PM 23 **Q. Did Ms. Magone say what is contained**
 12:26:00PM 24 **in the second sentence of paragraph three?**
 12:26:13PM 25 **MR. KEIL: I believe the**
 COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1 question is, are those the words, the
 2 precise words that Ms. Magone used?
 3 **Q.** At the meeting.
 4 **A.** I don't recall that as being an
 5 exact quote from Cathy Magone.
 6 **Q.** Did you ever dispute what
 7 Ms. Newmark wrote in the e-mail to you?
 8 **A.** Dispute in what sense?
 9 **Q.** Did you relay and say, your
 10 recollection of the meeting was inaccurate?
 11 **A.** No.
 12 **Q.** Do you recall anything else that was
 13 said by Ms. Newmark at this meeting?
 14 **A.** Not that I recall, no.
 15 **Q.** Do you recall anything else that was
 16 said by Ms. Magone at this meeting?
 17 **A.** I think that during this meeting,
 18 that when Cathy was speaking to Carole about her
 19 assignment to the mental-health project, that
 20 Cathy made a statement to the effect that
 21 regarding the mental-health project, that Carole
 22 had not advanced the project or been proactive,
 23 or words to that effect, to make any progress on
 24 the project, to date.
 25

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1 **Q.** Anything else that was said during
 2 this meeting?
 3 **A.** Not that I recall.
 4 **Q.** So, when you testified earlier that
 5 the issue at this meeting wasn't performance;
 6 yet, Ms. Magone addressed several performance-
 7 related matters, did you interrupt Ms. Magone at
 8 all at this point to say, that is not what this
 9 meeting is about?
 10 **A.** My statement is not that Cathy
 11 Magone addressed several performance issues in
 12 detail at this meeting.
 13 **Q.** I'm not asking details, I'm asking,
 14 you mentioned several issues that were addressed
 15 by Ms. Magone concerning performance; right?
 16 **A.** No.
 17 **Q.** Did you ever interrupt -- that is
 18 not what you said?
 19 **A.** At this meeting?
 20 **Q.** Right.
 21 **A.** Cathy Magone, as I recall, did not
 22 address, in detail, several performance issues.
 23 **Q.** I'm not asking about, in detail.
 24 Did you ever interrupt Ms. Magone to
 25

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1 say, this meeting concerns the comments you made
 2 relating to Nicole Serra's selection?
 3 **A.** No.
 4 **Q.** Did you ever reduce this meeting in
 5 writing?
 6 **A.** No.
 7 **Q.** Why not?
 8 **A.** I didn't feel it was necessary.
 9 **Q.** Why didn't you believe it was
 10 necessary?
 11 **A.** My role during this meeting was to
 12 facilitate the meeting between an employee who
 13 had a concern and the person who could best
 14 address that concern. That was my role in the
 15 meeting, as facilitator. The substance of what
 16 was shared between the two people was between a
 17 team-member employee and the person they reported
 18 to, and the clarification of a comment.
 19 **Q.** Anything else?
 20 **A.** No.
 21 **Q.** You didn't see your role, apart from
 22 being a facilitator, doing anything else with
 23 respect to your HR responsibilities?
 24 **A.** I don't understand your question.
 25

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1 **Q.** In connection with discrimination
 2 complaints, do you have any responsibilities?
 3 **A.** This was not, in my view, a formal
 4 complaint of discrimination.
 5 **Q.** Where is there a requirement that
 6 there be a formal complaint of discrimination
 7 before in your view, that comes to terms with a
 8 formal complaint of discrimination?
 9 **MR. KEIL:** Objection as to
 10 form.
 11 **MS. NICAJ:** Withdrawn.
 12 **Q.** Where is the distinction drawn? Is
 13 there anywhere in the policies or procedures at
 14 Lawrence?
 15 **MR. KEIL:** Objection as to
 16 form.
 17 Answer, if you can.
 18 **A.** Your question is, where is the
 19 distinction drawn? I don't understand what your
 20 question is.
 21 **Q.** You said, in your view, it wasn't a
 22 formal complain of discrimination.
 23 **A.** Correct.
 24 **Q.** Where is that contained, that
 25

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 distinction, in any policies and procedures as to
 3 how to proceed?
 4 MR. KEIL: Object as to
 5 form, again.
 6 A. If you're asking me, is there a
 7 distinction written in the policy, in our
 8 nondiscrimination policy, as to when something
 9 should be reduced to writing, I'm not aware of
 10 any distinction.
 11 Q. Is there any distinction between
 12 formal and informal complaints of discrimination
 13 contained in any policies or procedures at
 14 Lawrence?
 15 A. There is, in the sexual-harassment
 16 policy where there -- you're asking me if there
 17 is anything in any policy at Lawrence?
 18 Q. Yes.
 19 A. In the policy on sexual harassment,
 20 there was a form, actually, a formal written
 21 form, complaint form, attached to that policy
 22 that an employee could submit if they felt that
 23 sexual harassment was going on.
 24 Q. That didn't apply to other forms of
 25 discrimination?

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 A. You're asking me if it was in the
 3 policy, and I'm telling you that is the only one
 4 I'm aware of.
 5 Q. I'm asking you, did that form apply
 6 to any other forms of discrimination?
 7 A. No. As I recall, the form
 8 specifically was noted as being sexual-harassment
 9 policy, for a harassment complaint.
 10 Q. So, how would an employee, who
 11 wanted to file any discrimination complaint that
 12 had nothing to do with sexual harassment --
 13 either race, or gender, or age -- go about
 14 following the procedures?
 15 A. Well, a discrimination complaint for
 16 any reason is typically attached to some sort of
 17 job action. So, if someone were to come forward
 18 and say, I applied for a promotion but didn't get
 19 it, or you know, some other action - I wasn't
 20 hired into a particular position to begin with -
 21 and there was an accusation of some type of
 22 discrimination in employment practices, then, you
 23 know, I would consider that a formal complaint.
 24 Q. Wasn't there a job action here?
 25 Ms. Newmark wasn't appointed to the palliative-

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 care services.
 3 A. That is not a job action.
 4 Q. What is it?
 5 A. Assignment of a project to a team
 6 member.
 7 It happens all the time in the
 8 department.
 9 Q. Assignments aren't generally
 10 perceived as job actions?
 11 A. No. This was not something that had
 12 additional compensation attached to it. Or
 13 promotional opportunity, or change of hours, or
 14 schedule. It was simply an additional duty.
 15 Q. You're saying that it would
 16 typically involve a job action.
 17 What about in reference to claims
 18 that there have been age- or racist-related
 19 comments made in a work place? How is that
 20 treated?
 21 A. Treated exactly the way I treated
 22 it - by following up on the concern, seeking
 23 clarification from the person who allegedly made
 24 the comment, and hoping that the two can
 25 reconcile when the person comes forward and says:

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 2 That was not my intent. I believe you used the
 3 word out of context. Here is what I said. Here
 4 is what I meant. And the fact is, you know, your
 5 age played absolutely no part in this decision.
 6 Q. Is that contained anywhere in
 7 writing?
 8 A. Is what contained anywhere in
 9 writing?
 10 Q. The procedure by which you just
 11 articulated how you handled these sorts of
 12 actions, as you said.
 13 A. Well, all of our policies say that
 14 the initial step is to try to resolve whatever
 15 the concern is.
 16 Q. There was the initial step;
 17 Ms. Newmark came to you?
 18 A. Yes.
 19 Q. Is that right?
 20 A. Correct.
 21 Q. And then, she communicated -- after
 22 she wasn't satisfied with your meeting with
 23 Ms. Magone, she communicated that to you again;
 24 right?
 25 A. Yes, she did.

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1
12:27:28PM 2 Q. And then the third time, there was a
12:27:28PM 3 meeting with you, Ms. Magone, and Ms. Newmark;
12: 4 right?
12: 5 A. Yes.
12:27:33PM 6 Q. And she, again, communicated her
12:27:36PM 7 dissatisfaction of the results of it; is that
12:27:40PM 8 right?
12:27:41PM 9 A. Yes.
12:27:43PM 10 Q. What did you do after you received
12:27:47PM 11 what is marked as Plaintiff's 5?
12:28:06PM 12 A. After receiving this e-mail, I went
12:28:06PM 13 back to Cathy Magone and advised her that
12:28:10PM 14 Carole's concern remained; she was still not
12:28:17PM 15 accepting of Cathy's explanation and that she had
12:28:21PM 16 some additional questions.
12:28:22PM 17 Q. Did you communicate this in writing
12:28:24PM 18 or verbally?
12:28:26PM 19 A. I think I forwarded Carole's e-mail
12:28:28PM 20 to Cathy.
12:28:31PM 21 Q. Apart from forwarding that e-mail --
12:28:31PM 22 well, withdrawn.
12:28:36PM 23 You actually told Ms. Magone all
12:28:36PM 24 these things about Ms. Newmark's remaining
12:28:38PM 25 concerns?

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1
12:28:50PM 2 A. I don't recall if I spoke to her and
12:28:50PM 3 reiterated what was in the e-mail, or forwarded
12:28:58PM 4 the e-mail so that she could see the detail,
12:29:12PM 5 herself.
12:29:13PM 6 Q. So, when you said you advised her,
12:29:20PM 7 that is not accurate; is that right?
12:29:27PM 8 A. I'm sorry. Could you rephrase the
12:29:29PM 9 question?
12:29:29PM 10 Q. When you told -- when you previously
12:29:39PM 11 testified that you advised Cathy Magone of
12:29:58PM 12 Ms. Newmark's continued concerns, that is not
12:29:58PM 13 accurate; is that right?
12:29:59PM 14 A. Are we talking about subsequent to
12:29:59PM 15 my receipt of this e-mail dated September 29th?
12:30:07PM 16 Q. That's correct.
12:30:07PM 17 A. When I say I advised Cathy, what I
12:30:10PM 18 mean is, I made her aware. Whether I made her
12:30:12PM 19 aware verbally, or forwarded Carole's e-mail to
12:30:14PM 20 her directly, or both, I don't recall
12:30:16PM 21 specifically.
12:30:16PM 22 Q. Did you communicate -- apart from
12:30:19PM 23 the e-mails, did you communicate, by telephone or
12:30:27PM 24 in person, with Ms. Magone about Ms. Newmark's
12:30:30PM 25 continued concerns?

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

12:30:27PM 2 A. I don't recall.
12:30:28PM 3 MS. NICAJ: Let's take a
12:30:29PM 4 short break.
5 (Recess held).
6 CONTINUED EXAMINATION BY MS. NICAJ:
12:40:33PM 7 Q. Getting back to the September 28th,
12:40:34PM 8 meeting. Prior to the actual meeting with
12:40:37PM 9 Ms. Magone and Ms. Newmark, did you meet with
12:40:41PM 10 Ms. Newmark separately that day just preceding
12:40:48PM 11 your meeting with Ms. Magone, too?
12:40:50PM 12 A. Not that I recall.
12:40:54PM 13 Q. Do you recall Ms. Newmark ever
12:40:58PM 14 communicating that she was, quote, "over the fact
12:40:59PM 15 that Nicole Serra had been selected for that
12:41:00PM 16 palliative-care unit"?
17 A. No.
12:41:13PM 18 Q. Are there any documents you can use
12:41:14PM 19 to refresh your recollection?
12:41:16PM 20 A. Not that I know of.
12:41:17PM 21 Q. Did there come a time you
12:41:20PM 22 communicated with anyone after this September
12:41:28PM 23 28th meeting concerning Ms. Newmark?
12:41:47PM 24 A. I'm sure I must have had direct
12:41:50PM 25 communication with Cathy Magone prior to our

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1
12:41:50PM 2 final meeting with Carole.
12:41:55PM 3 Q. Do you recall having any
12:50:06PM 4 communication with Ms. Magone, as you sit here
12:50:11PM 5 today, prior to what you term as the final
12:50:16PM 6 meeting with Ms. Newmark?
12:50:17PM 7 A. Yes. I recall speaking with Cathy
12:50:22PM 8 about the fact that, in her estimation, Carole
12:50:25PM 9 was not going to successfully complete her
12:50:28PM 10 probationary period and that it was her decision,
12:50:40PM 11 based on the attendance and ongoing performance
12:50:47PM 12 concerns, to separate employment.
12:50:57PM 13 Q. When did you communicate with
12:50:59PM 14 Ms. Magone concerning that?
12:50:59PM 15 A. I don't recall exactly, but it would
12:50:59PM 16 have been prior to the final meeting, because we
12:51:00PM 17 would have scheduled a final meeting. So, I'm
12:51:03PM 18 sure we had to communicate about when and where
12:51:06PM 19 we would meet with Carole.
12:51:07PM 20 Q. Do you recall what the communication
12:51:12PM 21 was - was it by telephone, in person, via e-mail,
12:51:16PM 22 some other form - with Ms. Magone?
12:51:25PM 23 A. I don't recall that it was by
12:51:27PM 24 e-mail. To my best recall, it was probably a
12:51:31PM 25 combination of telephone and perhaps brief,

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